CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 379

THE PENNSYLVANIA RAILROAD COMPANY, PETITIONER,

vs.

MARGARET V. CHAMBERLAIN, AS ADMINISTRATRIX OF THE GOODS, CHATTELS, AND CREDITS OF CHARLES FREDERICK CHAMBERLAIN, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 19, 1932

CERTIORARI GRANTED OCTOBER 17, 1932

(37,076)

(37,076)

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IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

Margaret V. Chamberlain, as Administratrix of the Goods, Chattels, and Credits of Charles Frederick Chamberlain, Deceased, Plaintiff-Appellant,

against

The Pennsylvania Railroad Company, Defendant-Appellee

Statement under Rule XIII

This action was commenced in the District Court of the United States, for the Southern District of New York, by the service of the summons and complaint on March 13, 1930. The answer of the defendant was served and filed on April 28, 1930.

The plaintiff's attorneys are, Sansone & Gelb, and the defendant's attorneys are, Burlingham, Veeder, Fearey, Clark & Hupper. There has been no change of parties or substitution of attorneys since the institution of the action. [fol. 2] The trial of the action was started on January 4, 1932, before Hon. Harry B. Anderson, District Judge, and a Jury, and continued on January 5th and 6th, 1932, and resulted in a direction by the Trial Judge, of a verdict in favor of the defendant and against the plaintiff.

Judgment was entered in favor of the defendant on January 14, 1932, in the sum of $90.75.

Petition for appeal, order allowing appeal, notice of appeal, assignment of errors and supersedeas bond were filed on January 15th, 1932, and the citation was served and filed on January 15th, 1932.

[fol. 3] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

MARGARET V. CHAMBERLAIN, as Administratrix of the Goods, Chattels, and Credits of Charles Frederick Chamberlain, Deceased, Plaintiff,

against

THE PENNSYLVANIA RAILROAD COMPANY, Defendant

PETITION FOR APPEAL

To the Honorable Judges of the United States District Court for the Southern District of New York:

The plaintiff in the above case, feeling herself aggrieved by the judgment in favor of the defendant and against the plaintiff in the sum of $90.75, entered and filed in this cause in the office of the Clerk of the United States District Court, for the Southern District of New York, on the 14th day of January, 1932.

Comes now by Sansone & Gelb, her attorneys, and prays [fol. 4] for a reversal of said judgment, and to that end, to prosecute an appeal to the United States Circuit Court of Appeals, for the Second Circuit, according to the laws of the United States, in such cases made and provided.

Dated New York City, N. Y., January 14th, 1932.

Margaret V. Chamberlain, by Sansone & Gelb, Attorneys for Plaintiff. Office & P. O. address: No. 233 Broadway, Borough of Manhattan, City of New York.

[fol. 5] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Jan. 14, 1932

Upon reading and filing the petition of the plaintiff for allowance of an appeal herein, and the notice of appeal, [fol. 6] bond and assignment of errors, and on motion of Sansone & Gelb, attorneys for the plaintiff, it is

Ordered that the said appeal be, and the same hereby is, allowed; and it is

Further ordered that a citation addressed to the plaintiff herein be issued according to law; and it is

Further ordered that a transcript of the record, papers and proceedings herein, duly authenticated by the Clerk of this Court, be submitted to the United States Circuit Court of Appeals for the Second Circuit.

Francis G. Caffey, U. S. D. J.

[fol. 7] In United States District Court

[Title omitted]

Notice of Appeal

Sirs: Please take notice that the plaintiff herein, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, at the next Term thereof, to be held at the Court House, Post Office Building, Borough of Manhattan, City of New York, from the judgment entered in the office of the Clerk of the District Court, for the Southern District of New York, on the 14th day of January, 1932, in favor of the defendant and against the plaintiff, in the sum of $90.75, from each and every part, as well as the whole thereof.

[fol. 8] Dated N. Y., January 14th, 1932.

Yours, etc., Sansone & Gelb, Attorneys for Plaintiff. Office & P. O. address: No. 233 Broadway, Borough of Manhattan, City of New York.

To Burlingham, Veeder, Fearey, Clark & Hupper, Attorneys for Defendant, No. 27 William Street, Borough of Manhattan, City of New York.

[fol. 9] In United States District Court

[Title omitted]

Summons

To the above named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness the Honorable John C. Knox, Judge of the Dis- [fol. 10] trict Court of the United States for the Southern District of New York, at the City of New York, this 14th day of March, A. D. 1930.

Alex Gilchrist, Jr., Clerk. (Seal.)

Sansone & Gelb, Plaintiff's Attorneys. Office & P. O. address: No. 233 Broadway, Borough of Manhattan, City of New York.

IN UNITED STATES DISTRICT COURT

[Title omitted]

COMPLAINT

[fol. 11] Plaintiff, by her attorneys Sansone & Gelb complaining of the defendant, alleges as follows:

First. That at all times hereinafter mentioned, the defendant was and still is a corporation organized and existing under and by virtue of *of* the laws of the State of Pennsylvania.

Second. That at all times hereinafter mentioned, the defendant maintained an office and place of business in the City and County of New York, Southern District of New York.

Third. That at all times hereinafter mentioned, the defendant maintained a part of its tracks and equipment in said County and Southern District of New York.

Fourth. That all times hereinafter mentioned, the defendant owned, operated and controlled a certain system of railroad transportation, operating same for the carrying of passengers and freight in the States of Pennsylvania, New Jersey and New York, and by reason thereof, was, at the times hereinafter mentioned, engaged in interstate commerce.

Fifth. That on or about the 3rd day of November, 1929, plaintiff's intestate was in the employ of the defendant Railroad Company as a brakeman in its railroad yard at Morrisville, in the State of Pennsylvania.

Sixth. That at the time and place aforesaid, plaintiff's intestate was assisting in the breaking up and making up of trains, and in the classifying and assorting of cars, some of [fol. 12] which cars were brought into the State of Pennsylvania from points outside of said State, some of which cars were destined from said Morrisville Yard, in the State of Pennsylvania, to points outside of said State, and some of which cars so being classified and assorted by plaintiff's intestate contained freight of an interstate nature.

Seventh. That by reason thereof, plaintiff's intestate was, on the above-mentioned date, and at the time he met with the accident hereinafter referred to, engaged in the furtherance of the interstate commerce business of the defendant.

Eighth. That at all times hereafter mentioned, there was and still is in full force and effect a general statute of the United States of America and being Chapter 149 of the Laws of 1908 as amended by an Act of Congress approved April 5th, 1910, and known as "An Act Relating to the Liability of Common Carriers by Railroad to their Employees in Certain Cases", which statute is binding on the plaintiff and defendant herein.

Ninth. That at all times hereinafter mentioned, there was in full force and effect a certain general statute of the United States of America, being Chapter 196 of the Laws of 1893, known as "An Act to Promote the Safety of Employees and Travelers upon Railroads", approved March, [fol. 13] 1893, and Act of Congress, being chapter 976 of the Laws of 1903, and Chapter 160 of the Laws of 1910, approved March 2nd, 1903, and April 14th, 1910, respectively amending and extending said statutes, and all commonly known as "The Safety Appliance Act," which statute was and is binding on the plaintiff and defendant herein.

Tenth. That at the time and place aforesaid, while plaintiff's intestate was engaged in the performance of his duties as a brakeman in said Morrisville Yard of the defendant, at Morrisville, Pennsylvania, and while he was riding a cut of cars, through the negligence and carelessness of the defendant, its agents, servants and employees, some cars which were being ridden by fellow employees of the decedent, were caused to come in violent contact and collision with the car or string of cars upon which the intestate was riding, with the result that plaintiff's intestate was thrown from his position on said cars to the tracks below, and run over by a car or cars, doing him grave and serious bodily injuries, from which he subsequently died on or about the 5th day of November, 1929.

Eleventh. That said accident and consequent death of plaintiff's intestate was brought about by reason of the negligence, improper and illegal conduct of the defendant, its agents, servants and employees, in that the work in hand was being conducted in a reckless and careless manner; in that the defendant failed to provide decedent with [fol. 14] a reasonably safe place in which to work; in that the defendant failed to promulgate and enforce suitable and proper rules governing the operation of work then in hand; in that the defendant caused a string of cars to be shunted on to the same track upon which decedent's draft was proceeding, in a negligent and careless manner and at an excessive and dangerous rate of speed, and at a time and under circumstances when defendant's employees knew, or in the exercise of reasonable care, should have known of the danger of so shunting the said string of cars; in that those in charge of the operation of said string of cars which came in contact with the draft upon which the decedent was riding, failed to exercise the care of ordinarily reasonable and prudent persons in the operation of said draft, and failed to keep a proper lookout on the track upon which they were proceeding; in that they failed to maintain the draft which was following that upon which plaintiff's intestate was riding, under suitable and proper control, in view of the surrounding circumstances, to the end that the said draft would not be caused to come in violent contact and collision with the draft being ridden by the plaintiff's intestate. That the defendant violated the provisions of the Federal Safety Appliance Act, in that it failed to have the said draft which came in contact with the decedent's draft equipped with efficient hand brakes, as in said statute provided. That the defendant failed to give decedent suitable and timely warning of the impelling collision.

[fol. 15] Twelfth. That heretofore and by an order duly made by the Surrogate of Mercer County, in the State of New Jersey, the above-named plaintiff was duly appointed administratrix of the Estate of Charles Frederick Chamberlain, deceased.

Thirteenth. That said decedent left him surviving a widow, namely, this plaintiff, and an infant son, approximately four months of age, both of whom were solely dependent upon decedent for support and maintenance.

Fouteenth. That by reason of the premises, the plaintiff has been damaged in the sum of $75,000.00.

Wherefore, plaintiff demands judgment against the defendant for the sum of Seventy-five Thousand ($75,000.00) Dollars, together with the costs and disbursements of this action.

Sansone & Gelb, Attorneys for Plaintiff. Office & P. O. address: No. 233 Broadway, Borough of Manhattan, City of New York.

(Verified February 13, 1930.)

[fol. 16] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER

The defendant above named by Burlingham, Veeder, Fearey, Clark & Hupper, its attorneys, answering the complaint of the plaintiff, respectfully shows to the Court as follows:

First. It admits the allegations contained in the first article of the complaint.

Second. It admits the allegations contained in the second article of the complaint.

Third. It admits the allegations contained in the third article of the complaint.

[fol. 17] Fourth. It admits the allegations contained in the fourth article of the complaint.

Fifth. It denies that it has any knowledge or information sufficient to form a belief as to each and every allegation contained in the fifth article of the complaint except that it admits that plaintiff was in its employ at the times in the complaint mentioned.

Sixth. It denies that it has any knowledge or information sufficient to form a belief as to each and every allegation contained in the sixth article of the complaint.

Seventh. It denies that it has any knowledge or information sufficient to form a belief as to each and every allegation contained in the seventh article of the complaint.

Eighth. It denies that it has any knowledge or information sufficient to form a belief as to each and every allegation contained in the eighth article of the complaint and it leaves to the Court the determination of all questions of law.

Ninth. It denies that it has any knowledge or information sufficient to form a belief as to each and every allegation contained in the ninth article of the complaint and it leaves to the Court the determination of all questions of law.

Tenth. Upon information and belief it denies each and every allegation contained in the tenth article of the complaint.

[fol. 18] Eleventh. Upon information and belief it denies each and every allegation contained in the eleventh article of the complaint.

Twelfth. It denies that it has any knowledge or information sufficient to form a belief as to each and every allegation contained in the twelfth article of the complaint.

Thirteenth. It denies that it has any knowledge or information sufficient to form a belief as to each and every allegation contained in the thirteenth article of the complaint.

Fourteenth. Upon information and belief it denies each and every allegation contained in the fourteenth article of the complaint.

Fifteenth. For a first, separate and complete defense it alleges upon information and belief that the injuries complained of, if any, were caused or contributed to by the plaintiff's own negligence.

Sixteenth. For a second, separate and partial defense it alleges upon information and belief that the injuries complained of, if any, were contributed to by the plaintiff's own negligence.

Seventeenth. For a third, separate and complete defense it alleges upon information and belief that all the risks and dangers connected with the situation at the time and place in the complaint mentioned were open, obvious and apparent, and were known to and assumed by the plaintiff.

[fol. 19] Wherefore defendant demands judgment that the complaint herein be dismissed with costs.

Burlingham, Veeder, Fearey, Clark & Hupper, Attorneys for Defendant, Office & P. O. address, No. 27 William Street, Borough of Manhattan, New York City.

(Verified April 25, 1930.)

IN UNITED STATES DISTRICT COURT

[Title omitted]

BILL OF PARTICULARS

Plaintiff submits the following as and for her bill of par-
[fol. 20] ticulars herein:

1. Plaintiff's intestate was riding a car or cut of cars into one of the tracks of the Morrisville Yard of the defendant Company.

2. Plaintiff's intestate, just immediately preceding the accident, was riding his car or draft of cars from the hump

towards the track upon which the cars were classified and made into trains, in the easterly end of the Morrisville Yard. Plaintiff is unable at the present time to state the number of the track upon which her intestate was riding.

3. The cut of cars referred to in the Tenth paragraph of the complaint, immediately preceding the accident, was likewise moving upon the track leading from the hump towards the tracks upon which the cars were classified and made into trains, in the easterly portion of the Morrisville Yard.

4. The car or cut of cars which came into contact with the car or cars upon which plaintiff's intestate was riding at the time of the accident, did so by reason of the fact that after the plaintiff's intestate's cut was made, a sufficient length of time was not allowed to elapse in order to enable him to properly and safely bring the cars to a standstill at the point designated for said cars. That it caused the car or cut of cars which collided with plaintiff's intestate's car or cut of cars, to be operated at an excessive and dangerous rate of speed, and greatly in excess of the cars ridden by [fol. 21] the plaintiff's intestate. That the person or persons in charge of the movement of said cars, failed to keep the same under suitable and proper control and so regulate the speed of said cars as to prevent their colliding with the car upon which plaintiff's intestate was riding; that the person or persons in charge of the movement of the cut of cars, operated the same in such manner as to show an entire absence of the exercise of care of an ordinarily prudent person. The collision was further caused by the fact that the person or persons in charge of the cutting of the cars off the hump, in violation of the custom and practice then and there prevailing, caused the cut of cars which collided with plaintiff's intestate's car, to be made without permitting a sufficient length of time to elapse after the plaintiff's intestate's cut was made, so that the following cut would not come into contact with the cut of plaintiff's intestate, and that the person or persons in charge of the cutting of the cars off the hump, caused the cut which collided with plaintiff's intestate's car, to be sent down the hump at an excessive and dangerous rate of speed, in view of the circumstances then and there existing. That the collision was further caused by reason of the fact that the person or persons in charge of the operation of the cut of cars which

collided with plaintiff's intestate's car, failed to keep a suitable and proper lookout ahead, failed to observe the car or cars upon which plaintiff's intestate was riding, to the end that the cut of cars would not come into contact [fol. 22] with the car or cars upon which plaintiff's intestate was riding.

5. The cut of cars which collided with the car or cars upon which plaintiff's intestate was riding, came into contact with same in a violent manner, throwing plaintiff's intestate from his position on said car or cars.

6. The information herein sought has been given above.

7. The information herein sought has been given above.

8. The information herein sought has been given above.

9. The information herein sought has been given above.

10. The information herein sought has been given above.

11. The information herein sought has been given above.

12. The draft of cars which came into contact with the car upon which plaintiff's intestate was riding, was not equipped with efficient hand-brakes, in that the same failed to control the movement of said draft of cars which collided with the cut on which plaintiff's intestate was situated.

13. The person or persons in charge of the cut of cars [fol. 23] which collided with plaintiff's intestate's car or cut of cars, failed to warn decedent of the impending collision, when they knew, or in the exercise of reasonable care should have known that such a collision was imminent and fraught with serious consequences to decedent.

Sansone & Gelb, Attorneys for Plaintiff. Office & P. O. address: No. 233 Broadway, Borough of Manhattan, City of New York.

(Verified September 4, 1931.)

[fol. 24] IN UNITED STATES DISTRICT COURT

[Title omitted]

EXTRACT FROM CLERK'S MINUTES—Jan. 4, 1932

Now comes the plaintiff by Sansone and Gelb, by Anthony Sansone and moves the trial of this cause. [fol. 25]

Lik-wise comes the defendant by Burlingham, Veeder, Fearey, Clark & Hupper, by William P. Allen. Thereupon a jury is duly impanelled and sworn, and the case proceed- to trial. At the close of plaintiff's case, defendant's attorneys move to dismiss the complaint. Denied, exception.

January 6, 1932.—Defendant rests. Plaintiff rests. Defendant moves for the direction of a verdict. The Court directs that the jury return a verdict for defendant and the jury returns a verdict for the defendant

Charles Weiser, Clerk.

An extract of the minutes.

[fol. 26] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

L. 47—25

MARGARET V. CHAMBERLAIN, as Administratrix of the Goods, Chattels, and Credits of Charles Frederick Chamberlain, Plaintiff,

against

THE PENNSYLVANIA RAILROAD COMPANY, Defendant

JUDGMENT

The issues in this action having duly come on for trial before Honorable Harry B. Anderson, District Judge, and a jury at a Stated Term of this Court, appointed for the hearing of common law causes on the 4th, 5th and 6th days of January, 1932, and the allegations and proofs on the part of the respective parties having been fully heard and considered and defendant having moved at the end of the case for the direction of a verdict in its favor, and the Court, after due deliberation, having granted said motion, and the jury having returned a verdict in favor of the defendant [fol. 27] and against the plaintiff on the issues in this action, and defendant's costs having been duly taxed in the sum of $90.75;

Now, on the summons, pleadings and all the proceedings heretofore had herein and on the extract of clerk's minutes and upon motion of Burlingham, Veeder, Fearey, Clark & Hupper, attorneys for defendant, it is

Ordered and adjudged that this action be and the same hereby is dismissed on the merits and that defendant, The Pennsylvania Railroad Company, recover of and from the plaintiff, Margaret V. Chamberlain, as Administratrix of the Goods, Chattels and Credits of Charles Frederick Chamberlain, Deceased, the sum of $90.75, its costs as taxed, and that said defendant have execution therefor.

Judgment signed and entered this 14th day of January, 1932.

Charles Weiser, Clerk of the United States District
Court for the Southern District of New York.

[fol. 28] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

L 47—25

MARGARET V. CHAMBERLAIN, as Administratrix of the Goods, Chattels, and Credits of Charles Frederick Chamberlain, Plaintiff,

against

THE PENNSYLVANIA RAILROAD COMPANY, Defendant

Before Hon. Harry B. Anderson, J., and a Jury

Bill of Exceptions

New York, January 4, 1932.

APPEARANCES

Sansone & Gelb, Attorneys for Plaintiff; Anthony Sansone, of Counsel.

[fol. 29] Burlingham, Veeder, Fearey, Clark & Hupper, Attorneys for Defendant; W. P. Allen, of Counsel.

A jury was duly impaneled, examined and sworn.

OPENING STATEMENT ON BEHALF OF THE PLAINTIFF

Mr. Sansone: May it please the Court, Mr. Foreman, and Gentlemen of the Jury: This is an action brought on account of an accident which resulted in the death of one of the employees of the Pennsylvania Railroad Company. On the date of the accident, the 3rd of November, 1929, Mr. Chamberlain was an employee of the Pennsylvania Railroad Company in its yard across the river in what is called the West Morrisville yard in Pennsylvania. At the time of his death he was what we call a car dropper, and his duties consisted of riding the cars down for the purpose of getting them into the various tracks so that trains could be made up.

In order that you may visualize the work in which he was engaged I might just describe this yard briefly to you.

[fol. 30] This yard is made up of many tracks, and one portion of the yard is used for the bringing in of trains from the west, then they keep moving in the direction of their final destination which is a big yard 40 or 50 tracks or more with trains coming in from the west and brought into the westerly end of this yard.

There they are broken up and classified according to the place where the trains and the cars of freight are finally going to go.

After they come in from the west to the westerly end of the yard some of them are shifted around to some parts of the yard, and others find their way over to the section of the yard where this accident occurred, which is known as the eastbound end of the yard. Traffic going east finally gets into this eastbound end of the yard, and that is going to be important, for the reason this action is brought under the law known as the Federal Employees Liability Act, and first, in order to recover we must prove that the decedent, that is, the dead man, was engaged in what is known in law as interstate commerce; in other words, facilitating traffic from one State to another. If he assisted in doing that work which helped this traffic from the west to keep on moving he was working in Pennsylvania and helped that traffic to go out of the State of Pennsylvania into the State [fol. 31] of New Jersey, and he then comes under the provisions of this Act, and then the law that is applicable will be stated to you by the Court.

I just wanted to mention that at this time so that you can see what we have to prove before we make out a case.

Those cars come into the receiving track at the westerly end of the big yard, and finally the cars that are going eastbound out of the State of Pennsylvania into the State of

New Jersey are brought through the yard, and brought over to that portion of it known as the hump at the east end of this yard.

This hump is an elevated portion of the yard, used for the purpose of classifying these cars.

Now, just imagine yourselves on the top of this hump and looking straight away from you, you would be looking in an easterly direction, and that is the direction in which these cars are moving, that are on their voyage eastbound, finding themselves finally in the State of New Jersey, which makes interstate commerce.

At the top of this hump, or the portion of the yard they call the hump, there is quite an elevation. In other words, coming from that portion of the yard, it goes up, slightly on an upgrade, until finally it comes to the peak or top of the hump. Then they have these car riders who ride the cars into the various tracks down at the easterly end of the [fol. 32] yard. While the grade is quite gradual coming to the top of the hump, when you get over it and start down it is a good stiff grade, a good steep runway, to get those cars started.

As it comes down east of this hump the first switch leads off to the right, and that leads into some number of tracks, five or six in number, I think, and coming down a little further there is a switch that leads off to the left which takes care of six or eight tracks, but the number isn't important now and down a little further there is another switch that leads off.

So that in order to get the cars into those various tracks, they do what they call dropping them over the hump, and for that purpose they have a number of men there that they call car droppers. In others words, as they get ready to drop a cut of cars into the various tracks, they have a man on top to ride it down and he is called a car rider.

Mr. Chamberlain, the dead man, was one of those employees engaged in riding cars down.

When the car riders get up on the cars, before they are cut off, they are supposed to test the brakes and see that they have got a good brake to ride it into the various tracks.

Now, to facilitate the movement of the cars into the [fol. 33] tracks on which they are going, so that they will go on the right track, they have switch tenders who go down from the hump and throw the various switches, so that the cars going on this track will drop off there, and the next car on another track, they will turn that onto the right track. So that you can see they have a distinct group of workers, men that throw the switches, doing nothing but that, and then they have the group of car droppers who get up on top and ride the cars down into the track for which the switch has been thrown.

Of course, the man riding the cars has nothing to do with the tracks he is going on. He is started down that incline, and he goes into the track for which the switch has been thrown.

So much for the work at the lower end.

Now, in the movement of these cars, they are pushing the cars over and dropping them over the hump steadily, and the witnesses will tell you how they do that. They have an engine at the rear end of the cars and they keep pushing cars up to the top, and there is a man standing there who pulls out the pin and uncouples them. This man pulls the pin while the cars are coming up so that the cars will be bunched together with the slack, and while there is no strain on their [fol. 34] knuckles like we have when a train is going over the road that is the time when the pin is pulled and the cut is made, and when the cars reach the top of the hump they go on down into the track for which they are destined.

We will show that this work is done with regularity and continuously, the idea being that the work shall go on properly and according to schedule, and that they shall have the switches arranged and have the work continue so that when the engine starts with the cars it can keep moving gradually, and they drop the cars over regularly. They have quite a number of car droppers up there ready to take each car or each draught of cars down.

The proof will show that this dead man was only at work at this work for a short time before the accident, and in this case it will be quite important to show that he was not a man of long experience, with the result that he was riding these cars with caution. He would get on the cars and see them over the grade, and he was going down gradually and feeling his way, as he had not been there so very long.

It is our contention that at the date of this accident the Railroad Company was negligent in this respect. On this occasion Mr. Chamberlain, when his turn came, had a cut of [fol. 35] two cars, and we will show that sometimes they cut off one car, or more cars, depending on how the cars come in the train, and the yard it is going into, and they have cars going to some other track, and depending on how the cars are lined up in the big string pushed up from the west yard, that is the thing that determines how many cars go into this track or some other track. So that they keep cutting and shifting them into the various tracks.

We will show that Mr. Chamberlain had been cut off with two cars of gravel, and we say on the interstate commerce feature of this case that these two cars were going to make up part of a train on one of the tracks, and when made up it was going to continue out eastbound into the State of New Jersey.

Of course, the defendant denies we were engaged in interstate commerce, and we have to prove it, and we will show you that right at the end of the yard, just east of the yard where they make up these trains, they go from the Morrisville yard in the State of Pennsylvania right across into New Jersey, and all trains that go down into that part of the yard, the only way they can go is to continue right out into the State of New Jersey, *and all trains that go down into that part of the yard, the only way they can go is to continue* [fol. 36] *right out into the State of New Jersey,* and in the usual and normal operation of that yard it is so constructed that when traffic comes in, it keeps moving to the eastward. Of course, this man wasn't going on the train, to take it out any further, but we state that we will show you that this defendant in an action previously brought by this same widow has admitted we were engaged in interstate commerce, but they deny it here.

We will offer you certified copies of records showing this Railroad Company has already admitted it, but they deny it now, and we have to prove it.

Now, coming back to the time of the accident, Mr. Chamberlain was given two cars to ride down, and we will have testimony to show that he started down with his cars under control and cautiously as I say, and we will further show that he continued down that yard in a cautious way, going into the track for which the switch had been thrown for him to go in.

We will further show that after he went down another cut was cut off and that went into some track, the exact number of that we don't know, but it is not important here, we don't think; then a second cut after that one, and that is the important cut. Mind you, Mr. Chamberlain was riding down [fol. 37] here with two cars under control, moving cautiously when another cut was cut off and went into another track, and then came the cut which we say caused this accident.

They started down this drag, as they call it, or this cut, of loaded cars, the exact number we don't know but between nine and a dozen loaded cars, having two or three men on it. They started this nine to a dozen loaded cars down that grade, and of course the more load you have got the more pick-up you have got and the faster they go and that draught started down going at a much faster speed than Mr. Chamberlain's draught was going, and picking up as it went down there. Finally it caught up to the draught our man was riding and ran into the rear end of it. We will show by witnesses that they saw Mr. Chamberlain going down there, they saw him going into the track that he was headed for, and they saw him just an instant before—the witness didn't see him actually at the time of the contact and see him thrown off at the place right on the track he was going into but he saw him just a few seconds before and this witness heard a crash, and he looked and he saw the cars that Mr. Chamberlain was riding and the other draught of cars going down on the same track together ending [fol. 38] up by seeing Mr. Chamberlain a few seconds before and paying no particular attention to the crash intervening and seeing all of those cars going down together, and no more sight of Mr. Chamberlain.

While the witness did not actually see the contact and the man going off, we are going to describe to you what happened and ask you to find from the facts we have got available, and from the inferences you can reasonably draw from that, that as he was going down these cars overtook and collided with his cars and he was hurt receiving the injuries which resulted in his death a couple of days afterwards.

There is no need of my going into the accident and the injury now, just how it happens- but I will only say that one of his arms was taken off, he lived a couple of days and died in the hospital as the result of the injury. I won't take any further time to detail the facts now, but that is briefly what we hope to prove and on which we are going to ask you to find a verdict in our favor.

Opening Statement on Behalf of the Defendant

Mr. Allen: May it please the Court, Mr. Foreman and Gentlemen of the Jury: At the outset let me state that the [fol. 39] defendant at the trial of this case will make no contention that Mr. Chamberlain was not engaged in interstate commerce.

Mr. Sansone: May we have that shown in the record, because the answer denies it.

The Court: He has already admitted it, and the stenographer has it in the record.

Mr. Allen: That will save a great deal of the proof.

Mr. Sansone: I don't like to interrupt, but do I understand that Mr. Allen——

The Court (interposing): Mr. Allen concedes that the plaintiff decedent was engaged in interstate commerce at the time of the accident that resulted in his death so that that eliminates all of that question.

Mr. Allen (continuing): Now, Mr. Sansone has told you here what he expects to prove. I shall be very brief in telling you the other aspects of this case.

At the time in November, 1929, this was a large active yard of the Pennsylvania Railroad Company. The fact that it has been discontinued since the spring of 1930 and is only used now and then at this time is not important, but at that time the yard was for classifying cars, as Mr. Sansone [fol. 40] says, and there is this hump on which the cars are ridden down into the various tracks which spread out like a fan. I think there are some 28 tracks in this section of the yard, the eastbound yard or Yard A.

The cars are brought up from the west side of this hump and pushed up there by an engine, and at the top there is a man there to cut the cars and let them go down over the hump to the various tracks that the cars are marked for. The cars are marked before they go up there, and are designated for certain tracks according to the classification they are intended for. They may have a cut of one car or may have a cut of as many as fifteen cars on the same track.

When two or three cars are in a cut, only one man rides, and I believe from seven to fifteen cars it is three men, two or three, and these brakemen or car droppers, or car riders mount the cars as they are cut off to go down into the tracks. The cars go down by gravity, as you see, and these men are supposed to keep them under control and drop them at the proper place, and if they have to be put up against cars on the track, to see that they go up at a moderate rate.

Mr. Chamberlain, I believe, had started to work in the [fol. 41] middle of October, and he had been instructed as to his duties as a car dropper or brakeman, instructed how to operate the cars and the brakes, where to ride them and so on.

Mr. Sansone says that because of the fact that he had only had two or three weeks work, he was riding very cautiously.

We expect to show you that is not the fact, that as he went over the hump and started down the hump he didn't get his cars under control, and that he was warned by two or three of his fellow employees to slow them up.

Some cars had already gone in on this track, No. 14, prior to that time and some cars came in afterwards.

Between the time his draught was cut off and the time the following draught of nine cars was cut off for Track 14, another draught had been cut off and sent in to one of the other tracks.

Just what happened to Mr. Chamberlain, I will ask you to wait until you hear the proof. I am going to prove to you, I think, if we reach that stage, beyond any question of doubt, that the draught which followed Mr. Chamberlain, the nine cars, never collided with his two cars at all. When they came to a stop there was considerable distance between those cars and the cars which Mr. Chamberlain had ridden. [fol. 42] Now, the contention of the plaintiff is, as I listened to his opening statement, that we were negligent in sending the subsequent draught down on this same track at such a speed and without proper care permitting it to collide with Mr. Chamberlain's draught.

We expect to prove that no such thing occurred, and that the following draught never struck his cars at all. How the accident happened, what caused him to fall from his car; we will leave to the witnesses to detail to you. They will tell you the facts of the occurrence as they saw them. I think I have interviewed almost everybody who was there.

There was some there maybe that I have not seen, and who may describe the accident as Mr. Sansone tells you, that this draught of nine cars struck Mr. Chamberlain's draught, but I will leave all of that to the witnesses.

Albert Lear Bainbridge, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Sansone:

Q. Mr. Bainbridge where do you live?
A. 1022 Ohio Street.
Q. Where?
A. Trenton, New Jersey.
Q. Keep your voice up so I can hear you down here, will [fol. 43] you?
A. I will try to.
Q. What is your occupation?
A. Now, salesman.
Q. Salesman in what line?
A. American Tea Company, Great American.
Q. Is there a place of business in Trenton?
A. Yes, Hudson Street.
Q. In November, 1929, were you employed by the Pennsylvania Railroad Company?
A. Yes, sir.
Q. For how many years prior to that time were you employed by the Pennsylvania Railroad Company?
A. From 1917.
Q. Until when?
A. Until 1930.
Q. Until nineteen what?
A. 1930.
Q. During that time did you work for the Pennsylvania Railroad Company steadily?
A. No. I was furloughed three times.
Q. When did you last work for the Pennsylvania Railroad Company?
A. In 1930.

Q. In the month of November, 1929, were you working for the company?

A. Yes.

Q. And where were you located?

A. Morrisville.

Q. And where is that?

A. Morrisville, Pennsylvania.

Q. In what capacity were you working for the Pennsylvania Railroad Company?

A. Brakeman.

Q. Now, did you know Mr. Chamberlain in his lifetime?

A. No, not until he came to work for the Pennsylvania Railroad Company.

Q. During the time he worked for the Pennsylvania Railroad Company had you known him?

[fol. 44] A. Yes.

Q. Did you see him about the yard from time to time?

A. Yes, sir.

Q. And do you know how long prior to his death he came to work for the Pennsylvania Railroad Company?

A. I would judge about three to four weeks.

Q. At that time just what work were you doing, that is in what capacity were you working there?

A. What do you mean, as brakeman.

Q. Did you work on the hump?

A. No, I was working on the extra drill.

Q. Do you know where the hump is for the eastbound traffic?

A. Yes, sir.

Q. Did you work from time to time in the vicinity of that hump?

A. Yes, sir; positively.

Q. Just what was there around near that hump which brought you and your crew in the vicinity of it?

A. I was working on the back of the office; the yard starts at 1 to 6 on one side of the office, and on the other side from 7 on further.

Q. You say on one side of the office you have tracks 1 to 6?

A. Yes, sir.

Q. And on the other side of the office you have tracks from 6 or 7 on up?

A. 7 on over there.

Q. How far from this portion of the yard they refer to as the hump was this office that you speak of?

A. About 200 feet—that is from the top of the hump to the bottom of the hump.

Q. Is the office east of the top of the hump or west?

A. East.

[fol. 45] Q. You say the office is about 200 feet east of the top of the hump?

A. Yes, sir.

Q. And is the office to the south or the north of the hump?

A. To the south.

Q. Now are you clear on that?

A. Yes, sir.

Q. If you are going down the hump you are going east, is that right?

A. Yes, sir.

Q. As you go down the track leading from the top of the hump, is the office to the left of the track going down, or to the right?

A. To the left.

Q. That would make it on the north, then, wouldn't it, that would make the office to the north of the track?

A. You would be going south.

Q. Anyway, as you go down the track leading from the hump——

A. (Interrupting.) The office is on the lefthand side.

Q. How far to the left of this track going down the hump is that office?

A. About 50 feet, I judge.

Q. Will you describe that hump to us, just tell us what the lay-out is there?

A. Well, it is one track coming up to the hump, coming up, I imagine on about a 30 degree angle, from the west.

Q. You say coming from the west there is one track going up to the point at the top?

A. That is it.

Q. You refer to the hump as the top of it?

A. Yes, sir.

Q. How long is the track toward the west as you are coming up and going to the east to the top of the hump.

[fol. 46] A. Well, I imagine from the bottom it would hold about 20 cars.

Q. Coming from the westerly portion of the yard, when you get into that one track that leads up to the top of the hump, you have got trackage in there to hold, you say, about 20 cars?

A. I should say about 20 or 25 cars in there.

Q. At the top of the hump how many tracks go down from the hump?

A. They have one main track, then they have three branches that go from the main track.

Q. As you come from the westerly end of the yard and coming up towards the top of the hump, how is that track as to whether it is level, or whether it is upgrade a little going easterly?

A. Coming up or going down?

Mr. Allen: If the Court please, I have a blue-print diagram drawn to scale and if counsel cares to use it, it may simplify this matter, and I would be glad to offer it to him now for his use.

Mr. Sansone: I would be glad to use it. We will offer it in evidence for illustrative purposes. We don't know that it is exactly accurate.

The Court: All right.

(Received and filed in evidence as Plaintiff's Exhibit No. 1.)

Q. Do you know the section referred to as yard A on that map?

A. Yard A, that is it.

Q. Is that the westerly end?

[fol. 47] A. That is the easterly end, going east.

Q. Yard A is which end of the yard?

A. That is the easterly end, going east; that is the east tracks.

Q. Will you step down here. Now where is the hump?

A. Here is the hump (indicating).

Q. Now where that is marked No. 2, that is the hump, is that right?

A. Yes.

Q. Refer there now and indicate this office to which you have referred.

A. This is the office (indicating).

Q. That is now marked yard office, is that right?

A. Yes, sir.

Q. Now when you refer to the track leading to the hump you refer to the single track that comes right along here to No. 2 hump?

A. This is the main line here.

Q. Coming easterly to No. 2 hump, the single track, that is what you have reference to?

A. That is right.

Q. And the track that you say holds approximately 20 cars is that single track from those switches up to the point marked hump, is that right?

A. Yes.

Mr. Allen: From the switches to the westward, you mean?

The Witness: Yes.

Mr. Sansone: Eastward, coming up here from the yard here, the single track going eastward.

Mr. Allen: That is correct.

Q. Now, you were located where at the time of the accident to Mr. Chamberlain?

[fol. 48] A. I was located right here by the office.

Q. Will you mark the letter "B" to indicate where you were at the time of the accident to Mr. Chamberlain?

A. (Witness marks on blue-print.)

Q. Now will you tell us just how the work is done there, with regard to getting the cars from the hump on that single track into the various tracks that the cars are to go on?

A. Well, in the beginning they mark the cars, mark the whole train, so many cars to No. 2 and so many for No. 3, and whatever it may be, then they have one of the older men to throw the switches.

Q. The switches down east of the hump, after they come over the hump?

A. That is the idea.

Q. Down there, he throws the switches to the different tracks the cars are going into?

A. Yes, he has a list of the cars just the same as they come off of the train, two for No. 8, three for No. 7, or whatever it may be, he knows where each cut is going all of the time, and then as they ride them down he throws the switches.

Q. Who cuts them off at the top?

A. That doesn't have to be any certain one, but it is generally one of the older men that does the cutting.

Q. How do they get down into the yard, do they go down alone, or do some of the men ride them down?

A. Oh, yes, they have men to ride the cars, one man for probably one, two or three cars.

Q. Sometimes they have a longer drag of cars, and then [fol. 49] they have more than one man, is that right?

A. Sure.

Q. Do you know the purpose of the man being on those cars when they ride them down?

A. It is in order to control the cars.

Q. Will you tell between what spaces of time they send those cars down?

Mr. Allen: I object to that, if the Court please, it is too general.

The Court: Let him answer, it doesn't do any harm.

Mr. Allen: We take an exception.

The Witness: That all depends. They run the cars down as a rule continuously.

Q. What?

A. They run the cars down continuously, very seldom stop, unless they have a cut that they have to bring the cars to a stop; the cars leave the top of the hump continuously.

Q. They are continuously pushed from the west toward the top of the hump, and they keep them moving steadily?

A. Yes.

Q. And the cars keep coming by there as they keep reaching the top, and they cut then off there?

A. Yes.

Q. And the engine is pushing these cuts and moving right along continuously?

A. Yes.

Q. Do you recall the date on which Mr. Chamberlain met with this accident?

A. November 3rd.

Q. 1929?

A. Yes, 1929.

Q. Do you recall about what time of day it was?

[fol. 50] A. As near as I can tell it was around 5 o'clock.

Q. Did you observe Mr. Chamberlain before the accident?

A. I saw him going by me.

Q. Where did you observe him?

A. He had his hand on the brake.

Q. How many cars did he have?

A. Two.

Q. Where were the cars, that is, Mr. Chamberlain's cars, when you first observed him?

A. Going off of the hump.

Q. Did you observe the cars as they went past you?

A. Not particularly. I noticed they were loaded with gravel.

Q. Where was Mr. Chamberlain then, as the cars went by you?

A. He was on the brake.

Q. On what end of this draft he had of two cars going down there, was he on the east end or the west end?

A. He was on the west end.

Q. Could you estimate the speed those cars were going as they went past you?

A. I judge about 8 or 10 miles an hour.

Q. How far away from you were those cars as they went by?

A. About 25 feet.

Q. In what direction were they going?

A. Going east.

Q. That is down grade?

A. Yes, that is down grade.

Q. After you saw him going by you, what did you next observe?

A. What did I next observe?

Q. Yes, did you see any other cars cut off behind him?

A. Yes, there was another cut went down back of him.

[fol. 51] Q. About how long after his cut went down was that other cut sent off behind him?

A. Possibly a couple of seconds.

Q. Do you know how many cars were in that cut behind him?

A. I think there were two, the same as his.

Q. Do you recall what kind of cars they were?

A. No, I don't remember. I think they was box cars. One was a box car I am pretty sure,—I am not sure what they were.

Q. Now as that cut went down behind him was there another cut released?

A. Then the band cars came down.

Q. The band cars, do you refer to that as a cut too?

A. It is a cut, only it is a larger cut.

Q. If you have more cars then, it is a band?

A. That——

Q. How many cars were in that band that you refer to?

A. I would judge between 8 and 10; I don't remember exactly, I didn't count them.

Q. That is your best judgment?

A. Yes.

Q. Can you tell how many men were on that band that you observed?

A. I know there was two, but I won't say whether there were three or not.

Q. Did you observe that go past you?

A. Yes.

Q. Will you tell about how fast it was going past you?

A. Well, when the tail end went by I imagine he was running between 10 and 12 miles an hour.

Q. As he was going down past you, could you tell whether it was increasing its speed or decreasing?

[fol. 52] A. Well, it generally does increase speed.

Mr. Allen: I move that be stricken out, your Honor.

The Court: All right, strike it out.

Q. Did you observe it after it went by you?

A. No, I didn't pay any more attention to it.

Q. As it was going past you, this band of cars, as it was going by, was it increasing speed or was it not?

A. Yes, it was increasing speed.

Q. After that band of cars went by you, did you see Chamberlain after that?

A. I noticed him going in on 14. He had already cleared the switch when I saw him.

Q. Could you tell about how far in he was, if you know?

A. I imagine a couple of car lengths.

Q. At that time could you tell how his cut was going, whether it was going fast or slow?

A. It was going very slow then, and I figured he was going to stop.

Mr. Allen: I move that be stricken out, if your Honor please, what he figured.

The Court: Strike it out.

Q. Was that your best judgment?

A. What is that?

Q. That he was going slow?

A. Yes, he was going slow; possibly three miles an hour.

[fol. 53] Q. When you saw it in on 14 the distance you told us, did you see Chamberlain?

A. Yes, he was on the car then.

Q. What part of the car was he on?

A. The same brake when I saw him first.

Mr. Allen: Where?

The Witness: On the same brake, on the west end.

Q. As you saw Mr. Chamberlain in where you told us on his draft, did you see the band of cars?

A. They were still going in, yes.

Q. Where did you see the band of cars when you saw Mr. Chamberlain's cars about two or three car lengths in on track 14?

A. They were just starting in.

Q. Starting in where?

A. They were on 14.

Q. You saw them then, going into track 14?

A. Yes, sir.

Q. Could you tell us how that band was going, as to whether it was going fast or slow?

A. From the way it looked it was going pretty fast to me, I judge around 14 or 15 miles an hour.

Q. What?

A. About 14 miles an hour.

Q. You have observed cars going up and down there for a long period?

A. Yes.

Q. Do you drive a car?

A. Yes, sir.

Q. How long have you driven a car?

A. Since 1917.

Q. So this speed you are giving, that is based on your judgment from driving cars and observing these cars there?

[fol. 54] A. Yes, that is it.

Q. After you saw this band, as you say, just going in on 14, what if anything did you do?

A. I didn't pay any more attention to it.

Q. What if anything attracted your attention?

A. Well, when I heard them come together I naturally looked down——

Mr. Allen: I move that be stricken out, your Honor.

The Court: Well, he says he looked down there, and he uses the word naturally, and what is the harm in that?

Mr. Allen: We take an exception.

Q. What happened when you saw the cars as you say, going east?

A. I saw them drifting in on 14.

Q. What if anything attracted your attention to the cars again?

A. I didn't pay any more attention to it until I heard somebody holler.

Q. After you had seen that band starting in on 14, did you hear anything?

A. I heard a loud crash, yes.

Q. When you heard the crash what if anything did you do?

A. I didn't pay any more attention to it.

Q. After you heard the crash, did you see the cars any more on 14?

A. Yes; they was drifting down to 14.

Q. What?

A. They were drifting down to 14.

Q. About how long after you say you saw Mr. Chamberlain's draft of cars in on 14—how long after you saw him [fol. 55] and saw the band of cars going in on 14, was it before you heard this crash?

A. Possibly a couple of seconds.

Q. You didn't see them when they came together?

A. No, I heard them.

Q. When you heard the crash, did you do anything?

A. No, I didn't pay any attention to it.

Q. After you heard the crash did you see the cars any more on 14?

A. Yes, they were drifting in on 14.

Q. After you heard the crash, you say the cars were driving in on 14, did you see Mr. Chamberlain any more after that?

A. No, I didn't see him.

Q. After the crash you saw the cars drifting in on 14, were Chamberlain's cars, and the other cars separated or were they together?

A. I couldn't tell that. They were all going down together, I couldn't tell whether they were coupled up or not.

Q. But you say they were all going down together?

A. Yes, all going down together.

Q. As to whether they were locked and coupled together, that you say you don't know?

A. I couldn't tell.

Q. After you saw the cars going in there, what if anything did you do?

A. After I saw them going in?

Q. Yes.

A. I didn't pay any attention to it anymore.

Q. After you heard the crash and you saw the cars going in, was your attention at all attracted to the cars down there?

A. No, sir.

[fol. 56] Q. Was your attention finally attracted to the accident?

A. When I heard them holler.

Q. Where did the hollering come from?

A. From down on 14.

Q. How long after you saw that band of cars going into 14—how long after hearing the crash, was it that you heard somebody holler down there?

A. Approximately a couple of minutes.

Q. And that is your best judgment?

A. That is my best judgment.

Q. After you heard the hollering down around 14, what if anything did you do?

A. I ran down there.

Q. You ran down there?

A. Yes, sir; I ran down there.

Q. When you got there, were there any other people there?

A. Yes.

Q. About how many?

A. Around three or four.

Q. When you got there did you observe Mr. Chamberlain?

A. Yes, they were picking him up.

Q. Could you tell where he was with respect to the switch leading into Track 14, whether he was to the east or the west of that when you saw them picking him up?

A. He was to the east.

Q. About how far east of the switch leading to 14 was he when you saw them picking him up?

A. I judge about six car lengths,—five to six car lengths.

Q. Will you mark on Plaintiff's Exhibit No. 1 approximately as best you can, where he was six car lengths down there.

A. I judge about in here. (Indicating by mark on Plain-
[fol. 57] tiff's Exhibit No. 1.)

Q. Just put a cross there, your best judgment where you think it was.

A. (Witness marks on Plaintiff's Exhibit 1.)

Mr. Sansone: The witness indicates a cross with a circle around it as being his best recollection of where the parting was.

The Witness: I don't know that I can say that is exactly where it was.

Mr. Sansone: It is conceded, Mr. Allen, that the track over which Mr. Chamberlain's draft went is marked with yellow crayon, and that the witness has marked in ink a circle around the letter "X" as the place where the body was being picked up when he got there.

Mr. Allen: Yes.

Q. And that distance Mr. Bainbridge, you fix as five to six car lengths, and that is your best judgment on that?

A. That is my best judgment.

Q. As you saw Mr. Chamberlain there, what was his condition?

A. Well, you couldn't see much about his condition. His arm was off.

Q. Do you remember which arm it was?

A. I think it was his left arm if I am not mistaken. We brought it over the next morning.

Q. You say we, who?

A. The yardmaster and I.

Q. His arm was off when you saw him down there?

[fol. 58] A. Yes.

Q. Was he bleeding?

A. Yes, he was bleeding in the face.

Q. When they picked him up there, do you know whether he was conscious or not?

A. Yes, he was conscious.

Cross-examination.

By Mr. Allen:

Q. You say you were employed as a brakeman by the Pennsylvania Railroad Company?

A. Yes, sir.

Q. When did you leave the service?

A. I think it was in May, I am not sure, April or May.

Q. Of what year?

A. 1931—1930, rather.

Q. Why did you leave?

A. I was furloughed.

Mr. Sansone: Did you say furloughed?

The Witness: Furloughed, yes.

Q. Now on November 3rd, 1929, what work were you doing?

A. I was working on what they call the 9:02 job, extra drilling.

Q. What is that?

A. It consists just of drilling rates at that time.

Q. And where were you drilling rates?

A. Between 1 and 6.

Q. Are they shown on that diagram?

A. I don't know whether they are on that. They are on the other side of the office in here. (Indicating on Plaintiff's Exhibit 1.)

[fol. 59] Q. Your work was on the north side of the yardmaster's office, is that right?

A. Yes.

Q. The tracks you worked are 1 to 6?

A. Yes, sir.

Q. Who was your conductor?

A. I am not sure, but I think it was Lohmeyer. We had a different conductor every day. It was an extra job and they had an extra conductor as well as extra brakeman.

Q. You think his name was what?

A. I think Wilmot, I am not sure.

Q. Who were the other brakemen with you?

A. I couldn't tell you that. There was one other brakeman, but I don't remember who he was.

Q. Did you have an engine?

A. Yes.

Q. Did you know who the engineer was?

A. That wasn't in our line of work.

Q. Did you know who he was?

A. No.

Q. Did you know who the fireman was?

A. I didn't know the engine crew at all.

Q. What time did you go to work on November 3rd?

A. 4 o'clock.

Q. Where did you get the cars you were drilling?

A. Why, they was brought in from the westbound.

Q. Did you have a hump up there?

A. No, we didn't drill by the hump.

Q. You were drilling flat grade?

A. All downgrade.

Q. You only had two brakemen?

A. Just two brakemen.

Q. Making cuts of those cars going in on Tracks 1 to 6?

A. That is it.

[fol. 60] Q. Where was your engine?

A. The engine will be on the spur back of the office.

Q. Is that shown here in this diagram?

A. I guess it is; it is coming down there from the left.

Q. You mean this is the spur?

A. That is the spur coming down from the yard above.

Q. The track leading into these six tracks, you call the spur?

A. That is what I call it; I don't know what they call it.

Q. About how many cars did you drill that day?

A. About how many cars?

Q. Yes, up to the time you say you were at the yardmaster's office.

A. We didn't drill any, just went up in the other yard to couple up a train, and we come down there waiting for orders.

Q. What yard did you go up to?

A. In the upper yard, I guess it is the "B" yard.

Q. You mean the yard to the west?

A. Yes; the yard to the west.

Q. What time did you report for duty?

A. 4 o'clock.

Q. You had to make up a train there?

A. Not make up a train; just couple it together; it was already made up, and we had to make the coupling.

Q. Did you make the couplings?

A. Yes.

Q. Two brakemen?

A. Yes.

Q. How many cars did you have?

A. Probably forty cars, but we didn't have to couple every car.

Q. How long did it take to do that?

A. Probably 15 minutes.

[fol. 61] Q. Then what did you do?

A. Went back to the office.

Q. What office?

A. The office shown on the diagram, the yardmaster's office.

Q. Where did you leave your train?

A. Didn't have any train, only had an engine.

Q. Where did you leave those 40 cars?

A. We wasn't taking the train out; we was only making them up for a train that was going out.

Q. Those weren't cars that you were going to drill on the tracks numbers 1 to 6?

A. No; we was just making the couplings for a train going out.

Q. When you came on duty at 4 o'clock, you made up this train in "B" yard, coupling them up, and that took you possibly 15 minutes?

A. 15 to 20 minutes; maybe half an hour.

Q. Now you say 15 minutes to half an hour?

A. I can't tell you the exact time it took for us to couple them up.

Q. How did you get back from "B" yard to "A"?

A. Come back on the engine.

Q. Do you know who the engineer was on that engine?

A. No.

Q. Of the fireman?

A. No, I can't remember now.

Q. Or the conductor?

A. I think it was Wilmot. What makes me think it was him, is because he was on that job practically all of the time.

Q. What time did you get back to "A" yard?

A. I will say we got back about 20 minutes to 5; possibly a quarter of five.

[fol. 62] Q. Where did your engine come?

A. Where did the engine come?

Q. Yes.

A. Cut across the spur to go from 1 to 6.

Q. You got off of the engine?

A. Yes.

Q. The conductor got off?

A. Yes.

Q. The other brakeman got off?

A. Yes.

Q. You were all off?

A. We were all off so far as I know, except the engineer and fireman.

Q. Was there any work to be done there?

A. We was waiting for orders. The conductor was in getting orders at the time.

Q. In where?

A. In the office.

Q. Where was the other brakeman?

A. I don't know where he was.

Q. Was he with you?

A. No, he was not with me; I was alone.

Q. When you got over to this "A" yard about 4:40 or 4:45 and got off of the engine, where did you go?

A. The first place, I got a drink on the side of the office, and then I walked around in front of the office.

Q. Which is the front; the south side?

A. Toward the hump.

Mr. Sansone: I didn't get that.

The Court: Toward the hump.

Mr. Sansone: To the south?

The Witness: Yes.

Q. You got there about what time?

A. As near as I can say, it was right around 5 o'clock.

[fol. 63] Q. How long, approximately, did it take you to get the drink of water?

A. That was only a matter of a minute or so.

Q. Your engine when it stopped was near the yard office?

A. Yes; right in the back of it.

Q. About how far would you say it was from the yard office?

A. The engine?

Q. Yes.

A. Probably 50 feet.

Q. Then the place where you got your water, is that outside of the yard office?

A. Outside of the office.

Q. West side or north side?

A. North side.

Q. You got your drink of water?

A. Yes.

Q. And it took you about a minute?

A. I judge about a minute.

Q. Then where did you go?

A. Then I walked around in front of the office.

Q. You got around in front of the office about what time?

A. Around 5 o'clock, I imagine.

Q. What were you doing the other time from the time you got over there at 4:40 or 4:45 with the engine?

A. It was probably 10 minutes of 5 when I was in front of the office. I won't say, it may have been 5 o'clock, for that matter.

Q. Was it after 5?

A. I couldn't tell you that.

Q. You don't know?

A. No, I don't know, because I wasn't paying attention.

Q. When you got the drink you immediately came around to the south side of the office, you say?

A. In front of the hump.

[fol. 64] Q. You have marked here with the letter "B" the place where you say you stood?

A. That's it; about 20 or 25 feet in front of the office.

Q. Was anyone with you?

A. No; I was alone.

Q. Do you know what became of the other brakeman?

A. No, I don't; I don't know whether he was in with the conductor or not.

Q. Did you see the conductor go in the yard office?

A. He was in the office, yes.

Q. Was there anyone else there in front of the yard office?

A. Not at that time.

Q. At any time while you were there?

A. That is what I say, not at that time; I don't know.

Q. What is that?

A. Not that I can remember.

Q. At the time you took up the position at the point indicated by the letter "B" on the diagram, Plaintiff's Exhibit No. 1, until the time you went down to Track 14, did you see anybody in front of the yard office?

A. Yes; several of them.

Q. Who?

A. I couldn't tell you that.

Q. Do you know the names of any of them?

A. I don't know that, because there were forty or fifty men working there.

Q. You say you didn't know Chamberlain except the time he worked with the Railroad, three or four weeks?

A. Yes, I worked with him.

Q. On what part of the road?

A. Braking.

Q. Out on the road or in the yard?

A. In the yard.

Q. The other men you saw in front of the yard office that [fol. 65] evening, did they work with you?

A. Yes, positively.

Q. Do you remember who they were?

A. No.

Q. You wouldn't remember if you heard the names, would you?

A. No; there is two men back there that I don't remember, back there now, and I don't know their names.

Q. When you got out in front of the yard office, can you approximately fix how many minutes that was before you went down to track 14?

A. Well, as near as I can say, possibly 10 minutes.

Q. About 10 minutes?

A. Possibly 10 minutes.

Q. During the 10 minutes you were doing nothing but standing there?

A. Just standing there.

Q. Not talking to anybody?

A. Not that I can remember.

Q. You were not paying any particular attention to what was going on?

A. Nothing particularly.

Q. Have you worked on this classification in "A" yard yourself?

A. Yes, sir.

Q. You are quite familiar with the way it is worked, aren't you?

A. Yes, sir.

Q. As I understand it, the engine is on the west end of the cars, to the west of the hump; is that right?

A. That is it.

Q. And all of the cars that are in the draft are marked, are they?

A. Marked for the certain tracks they are to go on.

Q. That is all done before the movement starts?

A. That is it.

[fol. 66] Q. The conductor has a list of those?

A. He has a card.

Q. The man making the cuts has a list?

A. He has a list the same as the conductor.

Q. And the man down on the switch has a list?

A. He has the same kind of a list.

Q. So that each one knows as the cut is made, how many cars are going to be in the cut and on what track the cut is to go?

A. That is it.

Q. They all get in their proper position beforehand?

A. That is it.

Q. Then you have a number of car droppers or car riders, you call them?

A. That is right.

Q. They get on the cars before the cut is made, do they not?

A. That is it.

Q. Then they ride them down in the yard onto the track, and they either walk back or come back on a little trolley that runs up there; is that right?

A. Yes.

Q. That is to say, a bus on the track that picks them up and takes them to the top of the hump again?

A. Yes.

Q. And then they again take other cuts down?

A. That is it.

Q. This is a continuous job after it is started, until all of the cars are classified?

A. That is right.

Q. And that is the way they were doing it this time, is that right?

A. That is right.

Q. When you say on the track west of the hump, you can get only 20 cars, you mean on this straight track between the hump and the first switch?

[fol. 67] A. Yes, between the hump and the first switch?

Q. But they run them back further?

A. Yes; back into the other yard.

Q. So that you may have a train of——

A. (interrupting) 80 to a hundred cars.

Q. That are to be drilled at one time; is that right?

A. Sure.

Q. And this evening when you were standing outside of the yardmaster's office, you don't know how many cars they were going to drill on that particular movement, do you?

A. I wasn't paying any particular attention.

Q. What kind of a night was it?

A. It was a sort of misty night.

Q. It had rained during the day?

A. Yes.

Q. And it was just getting dusk?

A. Well, it was not so you would need a light.

Q. They were not working with lights?

A. No.

Q. You could see?

A. Yes, sure.

Q. At the time you took up this position outside of the yardmaster's office, this drilling off of this hump was going on, was it not?

A. Yes, sir.

Q. Now, did you notice any draft before Chamberlain's?

A. No, I did not. The only reason was——

Mr. Allen (interrupting): I move if your Honor please that the latter part of the answer be stricken out.

The Court: All right.

Q. Had other drafts gone by before?

[fol. 68] A. I imagine they had.

Q. Did you see others going down?

A. Not before I seen Chamberlain, no.

Q. Do you mean to say that immediately after you took up this position at the point marked with the letter "B" on this Plaintiff's Exhibit 1 in front of the yardmaster's office the first draft that passed you was Chamberlain's?

A. Chamberlain was going off of the hump at that time, yes.

Q. So that as far as you know there was no other draft that had preceded him?

A. As far as I know, no.

Q. Now, when you took up this position at the point marked with the letter "B", about how far were you from the apex of the hump?

A. Possibly 200 feet.

Q. Had you seen Chamberlain get on his draft?

A. No, I didn't see him get on it.

Q. Where was his draft when you first saw it?

A. It was going down off of the hump.

Q. Had it been cut?

A. Oh, yes, it had been cut.

Q. He was where?

A. He was on the rear brake when I saw him.

Q. Did you notice where the brake was on the first car of his draft?

A. I am not sure about the first car.

Q. But the brake on the second car of his draft was on which end?

A. It was on the west end.

Q. What kind of cars were these?

A. They were gravel cars, gondolas.

Q. Gondola cars?

A. Yes.

[fol. 69] Q. You said when he was going about 8 or 10 miles an hour?

A. 8 or 10 miles an hour as near as I can judge—about 8 or 10 miles an hour.

Q. So that during the time he was going that 200 odd feet he had gotten to a speed of about 8 or 10 miles an hour, is that right?

A. Positively.

Q. There is nothing unusual about that?

A. No.

Q. Now as the cars came up to the hump on the westerly side they come up an incline, do they not?

A. Yes, sir.

Q. So that the slack is taken out and the lever can be pushed and the pin taken out and the cut made, is that right?

A. That is right.

Q. When it gets up to the apex of the hump the pin is out and it goes over and starts down the other side, is that right?

A. Yes, sir; that is right.

Q. And the brakemen or the riders get on the cars before they get on the apex, and they are supposed to try their brakes?

A. Yes, sir.

Q. If their brakes don't work, they are supposed to notify the conductor?

A. Yes.

Q. Was the conductor there at this classification movement?

A. Yes, he went up at the top of the hump.

Q. He was west of you?

A. Yes.

Q. And you could see him?

A. Yes.

Q. Who was making the cut?

A. I don't know that, he was on the other side.

Q. Did you know the conductor's name?

[fol. 70] A. I couldn't tell you now, he was a tall fellow, but I forget his name.

Q. When you saw Chamberlain passing you going eight or ten miles an hour, did you say anything to him?

A. Did I say anything to him—no.

Q. Where was he standing?

A. He was standing at the brake.

Q. On what part of the car?

A. On the west end.

Q. Was he there under the wheel on the gondola car, or was he standing there on the sill?

A. On the sill of course.

Q. Do you know whether he was using the brakes?

A. He had the brake on when I saw him.

Q. How do you know he had the brake on when you saw him?

A. I could hear it screeching.

Q. You could hear it?

A. Sure.

Q. You stated that you then saw another cut?

A. Another cut going on down.

Q. Who rode that cut?

A. I couldn't tell you.

Q. Was he a man you knew?

A. I suppose I knew him.

Q. You had worked with him?

A. I suppose so.

Q. How many cars in that second cut?

A. If I am not mistaken there were two.

Q. How many men on that cut?

A. One.

Q. That cut followed Chamberlain's right over the hump?

A. Positively.

Q. Do you know what track that went to?

[fol. 71] A. No, I don't; I wasn't paying any attention.

Q. About how fast was that cut going when it passed you?

A. I imagine about the same rate of speed, about 8 miles an hour.

Q. You say you imagine, but I want your best judgment.

A. About 8 miles an hour.

Q. You say there was an interval of two or three seconds between the time Chamberlain's draft passed you and the next succeeding cut?

A. Yes.

Q. You don't know what track that second cut went on?

A. No, I don't; I wasn't paying any attention.

Q. Now, during those two or three seconds Chamberlain was traveling at 8 or 10 miles an hour, was he, at least that?

A. That is what he was going when he passed me.

Q. You don't know what happened to him afterwards?

A. I don't know how fast he was going when he got down to the bottom, no.

Q. About how far was the position you were in at "B" from the switch leading into No. 14 track?

A. About 550 to 600 feet.

Q. You used the measurement car length here, what do you mean by a car length?

A. About 40 feet, isn't it?

Q. When you say a car length you mean 40 feet?

A. 40 feet.

Q. Now, after Chamberlain passed you, you were paying attention to the next cut?

A. No, I didn't pay any attention to it.

Q. Did you pay attention to Chamberlain?

A. Yes, I paid attention to Chamberlain.

Q. You watched Chamberlain, did you?

[fol. 72] A. For a minute when he passed me, yes.

Q. When you say a minute, you mean just the instant he passed you?

A. For a second when he went by me.

Q. And that is the only time you were paying any attention to him, isn't that so?

A. For that time, yes.

Q. That was just for the second that his two cars were passing you, is that right?

A. Yes.

Q. Then a couple of seconds intervened, did it?

A. Yes.

Q. Then this next draft of cars came past you?

A. Yes.

Q. And you just noticed that for a second as it passed you, is that right?

A. Sure.

Q. At that time when this second draft of two cars went by, you didn't notice where Chamberlain's draft was?

A. He was just going down the ladder. I could see him.

Q. About how far away from you was he when this second draft passed?

A. Possibly 100 feet maybe.

Q. 100 feet?

A. Possibly.

Q. About what switch had he gotten to?

A. I imagine he was around 16 switch.

Q. Around 16 switch?

A. 16 or 17.

Q. Then this next draft, did you notice what switch that went into?

A. No, I didn't.

Q. Were you looking down eastward?

A. I had changed around, and I wasn't paying attention to anything at that time.

Q. In other words, you were not paying attention to Chamberlain's draft?

A. No.

Q. And you were not paying attention to this second [fol. 73] draft?

A. No.

Q. After this second draft went by you say another draft went by and went down there?

A. Yes.

Q. And between the time this second draft passed you and the band of cars went past you, how long a time elapsed?

A. Possibly 30 seconds, something like that.

Q. A longer time between the second draft and the band?

A. Yes.

Q. Because there was at least 8 to 10 cars in that band?

A. Yes, I imagine 8 to 10 cars.

Q. The head of that draft would have been past you before the cut was made, wouldn't it?

A. Yes.

Q. About how many cars were past you before the cut of that went by?

A. I imagine two or three cars.

Q. Then at the time the head end was past you two or three cars, the rear of that band of cars was just coming over the hump?

A. Yes, just coming over the hump.

Q. The cut had been made and they were just starting to go down, is that right?

A. Yes.

Q. And you say that draft or band of cars was going about how fast?

A. When they passed me I imagine they was going 10 to 12 miles an hour.

Q. Which end, the far end, the west end of it—the rear end?

A. Certainly.

Q. Going faster than the others had gone?

A. Naturally it was going downgrade and it had to be going faster.

Q. How many men were riding it?

[fol. 74] A. Either two or three.

Q. Where were they?

A. At the brakes.

Q. There are brakes on all of the cars of the draft?

A. Yes, sir.

Q. Where were the two men?

A. I wasn't paying any attention to that.

Q. Were there any on the head car?

A. I wouldn't say whether it was the first or the second car.

Q. Any on the rear?

A. I think there were.

Q. Any through the center?

A. Yes, I think there was one in the center, if I am not mistaken; I think it was two or three men.

Q. Did you hear any brakes going on, on that draft?

A. Yes, certainly I heard brakes.

Q. You heard brakes going on, on that draft?

A. Yes.

Q. Did you see the men applying the brakes as they went past you?

A. They always do apply the brakes as they go down the hump.

Q. Well, did you see the men applying the brakes as they went down the hump?

A. I noticed one or two.

Q. As you saw them pass by, you saw them putting brakes on?

A. Sure.

Q. Where does the man who makes the cut stand?

A. Where does he stand?

Q. Yes.

A. There is times when he is five cars down from the hump, that is, to the west, and he makes the cut before it gets to the top of the hill, because he has to make the cut while he has got the slack.

Q. Did you see where he was this evening?

A. No, I didn't see him; he was on the other side of the [fol. 75] cars.

Q. At the time Chamberlain's draft passed you, you didn't know what track that was going on, did you?

A. No, sir; not at that time.

Q. At the time the next following draft passed you, you didn't know what track that was going on?

A. Positively not.

Q. At the time the band of cars went by, you didn't know what track that was going on?

A. Absolutely not.

Q. Now, during the time, from the time when Chamberlain passed you until the first car of the band of cars passed you, you had not paid any attention to where Chamberlain's cut was?

A. Chamberlain, or the cut following him.

Q. What?

A. Chamberlain or the other cut, I hadn't paid any attention.

Q. And from the time the first car of the band of cars passed until the last car of the band of cars passed, you didn't pay any attention to Chamberlain's cut?

A. Yes, I noticed him going in on 14.

Q. You noticed him, did you?

A. Yes.

Q. Where was the head end of the band of cars when you noticed Chamberlain going in on 14?

A. When Chamberlain was going in on 14, the head end of the band of cars, I would say was about 4 or 5 car lengths behind him.

Q. Behind him?

A. About 4 or 5 car lengths behind him.

Q. How far was that from you, the head end of this band of cars?

A. About 600 feet.

Q. About how many car lengths, would you say?

A. That would be about 14 or 15 car lengths from me.

[fol. 76] Q. Had another draft followed the 9-car draft?

A. Not as I know.

Q. You were standing there?

A. I wasn't paying any attention.

Q. You hadn't been paying any particular attention to these other drafts, had you?

A. No.

Q. Would you say another draft followed this band of cars?

A. I imagine it did, because there was other cars to be dropped off.

Q. Did you see them?

A. No; I was looking in the office at that time.

Q. After the 9-car draft or band of cars passed, you were looking in the office?

A. Yes; I turned around and looked in the office.

Q. Did you walk over to the office?

A. Yes; I looked in at the door.

Q. You mean you went over and looked in the door?

A. Yes; I looked in the door.

Q. Was the door open or closed?

A. Closed.

Q. Did you open the door?

A. No; I didn't bother to open it.

Q. You just went over to the door?

A. Yes; waiting for my conductor.

Q. When did you go over to that door of the office?

A. After the band went by me.

Q. After the 9-car band went by you?

A. Yes, whatever it was.

Q. Had it all passed you?

A. Yes.

Q. Did you go immediately after that band of cars passed you, over to the office?

A. As the band was going by I just turned around and walked over to the office.

[fol. 77] Q. As the band was going by; is that right?

A. Yes.

Q. How far would you have to walk from the position marked "B" on the diagram, to the office?

A. About 20 feet.

Q. When you were walking toward the door, your back was toward the band of cars?

A. Yes.

Q. Your back was also toward Mr. Chamberlain's draft; is that right?

A. That is right.

Q. And also toward the intervening draft between Chamberlain and the band; is that right?

A. Yes.

Q. You didn't walk very fast, I suppose?

A. I was in no hurry.

Q. You were not in any hurry when you say you went over to the door?

A. I was standing by the window.

Q. What?

A. I was standing by the window.

Q. You left the position "B" that you have marked there on this Plaintiff's Exhibit as the last car of this band of cars went by you?

A. I am not sure whether it was the last one or not.

Q. Well, toward the end of the band of cars?

A. Yes; toward the end of the band.

Q. You walked with your back to the track, going over toward the office?

A. Yes.

Q. About 20 feet?

A. That is right.

Q. Did you go to the door of the office?

A. I looked in the window.

Q. Did you stand looking in the window?

A. No.

Q. Did you see anyone in the office?

[fol. 78] A. I was looking for the conductor at the time.

Q. Did you see him?

A. No, I didn't see him.

Q. How long did you stay looking for the conductor?

A. Possibly a second.

Q. What?

A. Possibly a second.

Q. Now, during the time you were walking over toward the office and during the time you stood looking in the window, this band of cars was still moving, wasn't it?

A. Oh, yes.

Q. You didn't see it during that time, because your back was turned?

A. I imagine it was moving.

Mr. Allen: I move that answer be stricken out, if your Honor please.

The Court: Very well; strike it.

Q. You didn't see it, did you?

A. No.

Q. And you didn't see Chamberlain's draft?

A. I saw Chamberlain's draft when I looked around.

Q. From the time you left the position marked "B" to the time you got over to the window, you hadn't seen Chamberlain's draft or the intervening draft, or this band of 9 cars; is that right?

A. That's right.

Q. Now, when you got over to the window, it took you a second or two, to look in for your conductor?

A. I just glanced in.

Q. Then you turned around?

A. I turned around.

Q. At that time did you see the band of cars?

A. Yes.

Q. Where was the rear end of the band of cars?

[fol. 79] A. I couldn't tell you, just exactly where the rear end of the cars was.

Q. Well, where was the front end of the band of cars?

A. The front end of the band of cars was just going in on 14.

Q. Just going in on 14?

A. Yes, just going in on 14.

Q. So that during the time that you walked over and looked in the window, this band of cars had gone from the position you have described opposite the yardmaster's office up to the switch so that the head end was just going in the switch on No. 14?

A. Yes.

Q. Now, had you seen Chamberlain's draft go in on 14?

A. Yes.

Q. When had you seen that?

A. At the same time.

Q. What do you mean, at the same time?

A. The same time the band was going in I seen Chamberlain's cars going in ahead of it.

Q. I am asking you when had you seen Chamberlain's draft go in on No. 14 track?

A. I didn't see him go in; I seen him when he was in there.

Q. So that you never saw Chamberlain's cars go in on 14 at all, did you?

A. No; but I saw them in there.

Mr. Allen: If the Court please, I move the answer be stricken out after the word "No."

The Court: Very well, strike it.

Q. At no time did you see Chamberlain's cars go in on 14?

[fol. 80] A. No.

Q. And at the time that you say you saw the head of the band of cars reach the 14 switch, did you see Chamberlain's cars?

A. Yes.

Q. Where were they?

A. About 3-car lengths ahead of them.

Q. Were they moving?

A. Yes, sir.

Q. And where was Chamberlain?

A. He was at the brake, the same one.

Q. In the same position?

A. The same position.

Q. He had not moved so far as you know?

A. I couldn't tell you that.

Q. Were there any cars ahead of Chamberlain's cars?

A. I couldn't tell you that.

Q. Did you look?

A. No; I didn't notice.

Q. What did you do then?

A. I didn't pay any more attention to it.

Q. Did you look in the window again?

A. I don't know as I looked in the window.

Q. Did you keep looking down at the switch at 14?

A. I just didn't pay any more attention to it.

Q. Did you walk away?

A. I was still standing there in front of the office.

Q. Was there anyone else there then?

A. I couldn't tell you that just now.

Q. How long did you stand there after you saw the band of cars start in on No. 14?

A. Possibly 2 or 3 minutes.

Q. You have been using seconds before, do you mean two or three minutes now?

A. Two or three minutes.

[fol. 81] Q. Then you heard somebody hollering?

A. Yes.

Q. Up to that time had you heard anything else?

A. I heard the crash, heard the cars come together.

Q. When did you hear the crash?

A. When did I hear the crash?

Q. Yes.

A. After I noticed him going in on 14.

Q. How long after you noticed him going in on 14?

A. Possibly a couple of seconds.

Q. At that time you were not looking down that way?

A. No, sir.

Q. When you heard the crash, you didn't pay any attention to that, did you?

A. I didn't pay any attention.

Q. There was nothing unusual about cars coming together?

A. It was an extra loud crash; but I didn't pay any attention to it.

Q. Loud, because of the size and the number of the cars coming together; is that right?

A. Yes.

Q. There was nothing unusual about the crash of cars coming together out there?

A. It happens every day.

Q. There was nothing about this that attracted your attention to it?

A. Nothing particular only it was extra loud.

Q. But at any rate, you didn't look down there after that, and you didn't go over there?

A. I didn't pay any attention to it.

Q. It wasn't sufficient to attract your attention to it, was it?

A. No.

Q. Then 2 or 3 minutes elapsed before you heard any [fol. 82] hollering?

A. In the meantime I glanced down there and I saw the cars running in on 14.

Q. You saw cars moving?

A. Yes, cars moving in on 14.

Q. While the cars were still moving, you heard the hollering, didn't you?

A. No, the cars wasn't moving at that time.

Q. How far was the rear end of this band of cars from No. 14 switch when you heard the hollering?

A. I would judge about 5 to 6 car-lengths.

Q. You say 2 or 3 minutes had elapsed from the time of the crash until you heard the hollering?

A. I don't know just how many minutes elapsed in that time; but I imagine it was between 2 and 3 minutes.

Q. You mean minutes rather than seconds, don't you?

A. I said minutes, yes.

Q. I wanted to be sure you understood what you said.

A. Yes, I did.

Q. So that from the time you heard this crash until you heard the hollering, it was 2 or 3 minutes?

A. That's it.

Q. About how long did the cars continue to move from the time you heard the crash?

A. From the time I heard the crash I imagine about 2 minutes.

Q. 2 minutes?

A. I imagine about 2 minutes.

Q. The cars kept moving for about 2 minutes?

A. Yes.

Q. Did you see how fast they were going then?

A. I imagine they was going probably 7 or 8 miles an [fol. 83] hour.

Q. During those 2 minutes?

A. Sure.

Q. This whole draft of cars?

A. The chances are they moved down and slowed down some after hitting the other two.

Q. And you went down to 14, did you?

A. When I heard them hollering, yes.

Q. Where was Mr. Chamberlain at that time, when you got there?

A. They was just picking him up.

Q. Who do you mean by "they"?

A. I couldn't tell you that; there was three or four of them.

Q. Could you tell the names?

A. I wasn't familiar with the names.

Q. What?

A. I wasn't there long enough to be familiar with the names.

Q. During that month you had met Chamberlain, had you?

A. Positively.

Q. Hadn't you met the other men?

A. Mr. Chamberlain and I was hired about the same time; that is the reason Chamberlain and I was acquainted more than with the other fellows.

Q. You had worked on the railroad before?

A. Positively.

Q. When you got down there and saw Chamberlain, you say it was about 5 or 6 car-lengths from the switch?

A. From the end of the switch, I would judge.

Q. That is No. 14 switch?

A. Yes, sir.

Q. Where was the rear end of the draft of cars?

A. The rear end was about 5 car-lengths away from the switch.

Q. Then during those 2 minutes it had been travelling [fol. 84] from the time you heard the crash, how far would you estimate it had gone?

A. Probably 300 feet.

Q. It must have been going very slowly then; is that right?

A. I couldn't tell you about that.

Q. Well, you say it was 2 minutes from the time of the crash?

A. That is from the beginning.

Q. And then the cars were stopped?

A. In about 2 minutes.

Q. About how far did they move in that 2 minutes?

A. They must have moved about 8 car-lengths.

Q. That would be 320 feet, about?

A. Yes.

Q. That is going pretty slow, 2 minutes for about 300 feet.

A. Yes; they were moving very slow.

Q. About how fast would you say?

A. I couldn't tell you that.

Q. When you got down there, did you walk along all of those cars?

A. No.

Q. Did you see how many cars there were?

A. I didn't notice.

Q. Did you count the cars at all?

A. I didn't notice.

Q. Did you walk eastward from the point where you say Chamberlain was laying?

A. No, not at that time.

Q. Did you walk past any of these cars on 14?

A. Not at that time, no.

Q. Did you at any time?

A. Yes; about three-quarters of an hour later.

Q. How many cars were there on 14?

A. At that time the only cars on there was the cars that [fol. 85] went down.

Q. What?

A. I think the only cars on there was the cars that was on there when I went down.

Q. How many was that?

A. I didn't count them.

Q. Did you look at them?

A. I looked at them, sure.

Q. Could you tell whether it was 16 or 18?

A. I couldn't tell.

Q. Or 30?

A. I couldn't tell you.

Q. Were they all together?

A. Yes, they was all together.

Q. Who was with you when you went down there three-quarters of an hour later?

A. I was alone.

Q. Who did you first talk to about this case?

A. The first one I was talking to was the car inspector.

Q. What is his name?

A. I couldn't tell you that.

Q. You don't know his name?

A. I don't know his name.

Q. Where was he?

A. He was inspecting the brakes.

Q. When?

A. When I was down there.

Q. What time?

A. About three-quarters of an hour afterwards.

Q. Did you ever see him before?

A. I have seen him before, yes.

Q. Who did you next talk to?

A. Next, I don't know as I talked to anybody, only at that time a fellow by the name of Wood I was talking to him about it.

[fol. 86] Q. Who was he?

A. Another brakeman.

Q. Is he here in court?

A. I imagine he is down there.

Mr. Sansone: Mr. Wood, will you stand up.

(Mr. Wood stands up.)

Q. When did you talk to Mr. Wood?

A. In the meantime between the time of the accident and the time I came down to the cars.

Q. Between what?

A. In the meantime, between the time of the accident and the time I came down to those cars; that was about three-quarters of an hour.

Q. When did you see Mr. Wood?

A. I saw him in front of the office.

Q. Do you know what his full name is?

A. Charles.

Q. In front of what office?

A. The yardmaster's office.

Q. What time did you see him there?

A. Around 6 o'clock.

Q. What was his job?

A. His job is brakeman.

Q. Working with you?

A. No, he wasn't working with me.

Q. What work was he in?

A. I don't know.

Q. Was he doing any work?

A. No, not at that time.

Q. You say that was about 6 o'clock you saw him?

A. Around 6 o'clock.

Q. What did you do between 5 and 6?

A. I worked.

Q. Where?

A. I was working there from 1 to 6.

[fol. 87] Q. How long did you stay down there at track 14?

A. When I first went down, possibly 2 minutes—I don't know how long; but I didn't hang around there.

Q. Did you assist Chamberlain?

A. No, sir; I came right back.

Q. Then you went to your work?

A. Yes.

Q. What were you doing about 6 o'clock when you saw Wood?

A. We was having another check-up, laying around 5 minutes waiting for orders.

Q. You met him outside of the yard office?

A. Yes.

Q. From the time you spoke to him and the car inspector up until you went on the stand here, who did you talk to?

A. I haven't talked to anybody.

Q. Did you go up to the lawyer's office?

A. The lawyer came to see me.

Q. Mr. Wood was with him?

A. No, sir.

Q. Who was with him?

A. Nobody was with him at that time.

Q. Do you know Mr. Montague?

A. Oh, yes.

Q. Who is he?

A. He was a brakeman at that time.

Q. Did he come to see you?

A. No, sir.

Q. At any time?

A. Positively not.

Q. Did you ever see him in Mr. Sansone's office?

A. No, sir.

Q. When did you first talk to Mr. Sansone and Mr. Gelb about it?

A. Last Saturday.

Q. Just the day before yesterday?

A. Day before yesterday.

Q. You never had spoken to them before?

[fol. 88] A. Never had spoken to them before.

Q. Never had spoken to anyone except this inspector and Mr. Wood, about it?

A. That is all.

Q. At any time or place?

A. That is all. It never entered my mind.

Q. Who asked you to come down to their office?

A. They got my name.

Q. Did they come to see you?

A. Yes, they came to see me.

Q. Were you subpoenaed?

A. I was subpoenaed.

Q. Where did they come to see you?

A. At my house.

Q. Who came?

A. Mr. Gelb.

Q. On Saturday last?

A. Last Saturday.

Q. Anyone with him?

A. Mr. Sansone.

Q. About what time was that?

A. Around 10 o'clock.

Q. In the morning?

A. In the morning, yes.

Q. Up to that time you had never told them anything about this case?

A. Haven't seen them.

Q. And never told anyone about it except Mr. Wood and this car inspector whose name you don't know?

A. That is right.

Q. You hadn't seen Wood around there before 6 o'clock, had you?

A. Not around 6 o'clock.

Q. You hadn't seen him around that night?

A. I had seen him around, yes.

Q. What time did you see him around there?

A. At the time I came to work, 4 in the afternoon.

[fol. 89] Q. Where did you see him?

A. I saw him at the office.

Q. At this yardmaster's office?

A. Yes.

Q. What was he doing there?

A. I was signing on.

Q. What was he doing?

A. He was just standing there; I don't know what he was doing.

Q. Had you known him for some time?

A. Not any longer than I had known Chamberlain.

Q. Now, what job was it you say you were on, on this day?

A. Extra driller.

Q. Has it got a number?

A. 902, I think it is called.

Q. A or B?

A. B.

Q. 902 B?

A. 902 B.

Q. Had you worked on that job before?

A. Yes, sir.

Q. When had you worked on it before November 3rd?

A. I had worked on it pretty near steadily, pretty near every day.

Q. You were what they call an extra man?

A. Extra brakeman.

Q. This conductor whom you mentioned, Wilmot—what is his first name?

A. I couldn't tell you that. I am not sure whether it is him or not.

Q. Who were the other conductors you had worked with on that job?

A. I was trying to think; there was one other fellow besides him that used to be conductor on that job.

Q. What is his name?

A. I can't think of his name. It was either him or Wilmot that was there.

Q. You don't remember the other man's name?

[fol. 90] A. No, I can't tell you.

Q. Can you think of the other brakeman's name that was on the job with you?

A. I can't think of that either.

Q. Had he worked with you before?

A. If I could tell you that I could tell you his name; but I can't tell you his name.

Q. Now, when you looked from the window by the office, you say you saw Chamberlain's draft and the band of cars; where was this intervening draft at that time?

A. I don't know where they got to. They must have went on one of the other tracks.

Q. What?

A. They must have went on one of the other tracks.

Q. Did you see them?

A. I didn't notice them.

Q. How far is it from the top of the hump to the switch that leads into track 14, in your judgment?

A. About 800 feet.

Q. How far is it from the position you were, at the window, to that switch?

A. About 600 feet.

Q. About how long did it take you to move from the position "A" over to that window?

A. I couldn't tell you that.

Q. About how long a time elapsed from the time you left position "A" until you got to the window and turned around?

A. Probably a second.

Q. About a second?

A. Probably a second; I just glanced in and turned around.

Q. I mean from the time you walked the 20 feet and looked in.

A. How long does it take to walk 20 feet?

[fol. 91] Q. I am asking you.

The Court: I imagine the jury can answer that question as well as the witness. No man times himself when he walks 20 feet.

Q. During that time did you at any time look around to see where the draft of cars was?

A. Not until I looked around.

Q. When the draft is cut off the man cutting the draft is on the ground, isn't he?

A. Positively.

Q. And these cars at that time are only moving about as fast as a man can walk?

A. After the draft has been cut off?

Q. As he makes the cut?

A. It all depends on how many cars you have over the hump.

Q. But at the time he makes the cut he is on the ground walking alongside of it?

A. Positively; he has got to have the slack out.

Q. So at the time he makes the cut, the draft is only moving about as fast as a man walks, isn't it?

A. That is right.

Redirect examination.

By Mr. Sansone:

Q. When you pull the pin and make the cut, the cars have to be bunched together?

A. Yes.

Q. There is no strain pulling on them?

A. There can't be.

Q. When they are pulling a draft, that is, when they are [fol. 92] going to drop a draft or a band of 8 or 10 cars, do they always pull the pins on the top of the hump at the same place?

A. Oh, no.

Q. Why is that?

A. That is on account of the cars dropping over and pulling the slack up.

Q. If you have got a long string of cars, 8 or 10 cars going over, they will have to pull the pin out further west than when they have just one or two cars?

A. Positively.

Q. And the reason for that is in order to get the cut made before the front end of the draft starts going down over the hill and pulling the cars over?

A. Yes.

Q. And when you pull against the cars fastened to the engine and get the strain on the cars you can't pull the pin, can you?

A. That is it.

Q. So that the point where they pull the pin out, the point on the hump, depends on how many cars are going over?

A. Yes, sir.

(Recess until 2 o'clock.)

After Recess

Albert Lear Bainbridge resumed.

Redirect examination continued.

By Mr. Sansone:

Q. Mr. Bainbridge, you have been asked about different members of the crew that was working on your engine with [fol. 93] you; did you work with the same crew all of the time?

A. No; practically a different crew every time.

The Court: He has explained that and said that he didn't remember who the engine crew was but he thought he knew who the conductor was and he said it was somebody whose name I don't now recall.

Recross-examination.

By Mr. Allen:

Q. You say the number of your crew was 902-B?

A. Yes.

Q. What does the "B" indicate?

A. Second trick.
Q. That means from what hour to what hour?
A. 4 to 12.
Q. 4 P. M. to 12 P. M.?
A. Yes.
Q. You are quite sure the number of your crew was 902-B?
A. Yes, sir.
Q. It was "B"?
A. Yes, it must have been "B," the second trick.
Q. And you reported at what time for that?
A. 4 o'clock.
Q. Didn't you report 20 minutes of 4 for the second trick?
A. No, sir.

(Witness excused.)

[fol. 94] MARGARET V. CHAMBERLAIN, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Sansone:

Q. Mrs. Chamberlain, you are the wife of Mr. Chamberlain, the man who was killed in this accident?
A. Yes.
Q. How old was Mr. Chamberlain at the time of his death?
A. He was 23.
Q. How old were you at the time of Mr. Chamberlain's death?
A. I was just going on 22.
Q. Do you recall when Mr. Chamberlain went to work with the Railroad Company?
A. Yes.
Q. What month did Mr. Chamberlain start to work with the Railroad Company?
A. That was in October.
Q. And he was killed in November?
A. Yes.

Q. Do you know what Mr. Chamberlain was earning with the railroad, what his pay was?
A. I am not quite sure.

The Court: Haven't you got all of that tabulated, what he was making, Mr. Allen?
Mr. Allen: What is that, your Honor?
The Court: Haven't you got the decedent's wages tabulated, that would be authentic.
Mr. Allen: $6.62 a day.

Q. Did Mr. Chamberlain leave any children?
A. A little boy.
[fol. 95] Q. The name of the child?
A. Charles.
Q. Mr. Chamberlain was named what?
A. Charles Chamberlain.
Q. How old is the child now?
A. He was three months old at the time.
Q. How old is the child now?
A. He is two years and three months.

Mr. Sansone: Mr. Allen, you concede he was killed as the result of this accident?
Mr. Allen: Oh, yes.
Mr. Sansone: I offer in evidence the letters of administration appointing Mrs. Chamberlain Administratrix of the Estate of the decedent.

(Letters of administration received in evidence and marked Plaintiff's Exhibit No. 2.)

Mr. Sansone: If your Honor please, the plaintiff rests.

MOTION TO DISMISS

Mr. Allen: If the Court please, I want to move at this time to dismiss the complaint on the ground that the plaintiff has failed to establish a cause of action as alleged in the complaint, or any other cause of action; that the plaintiff has failed to show that the negligence of the defendant was the proximate cause of the plaintiff intestate's death; and has failed to establish that there was any negligence [fol. 96] whatsoever on the part of the defendant; and that the testimony as it now stands, is purely speculative, and there is no evidence that his death was caused by any negligent act on the part of the defendant; and that the testimony as it now stands clearly shows that whatever occurred there was the usual regular occurrence in the operation of these cars; that there was nothing unusual about the fact that cars may have come together, and there is no proof that the coming together of any cars, even if believed, was the proximate cause of the accident and the death of the plaintiff intestate; that it has not been proved that he was knocked from his car by the impact, or that he might have fallen from his car for any other reason, because there is no evidence whatsoever as to that and it is pure speculation that the bumping of the cars together caused his fall; and the testimony of the witness here shows there was nothing unusual or irregular except there was a louder noise of cars coming together than ordinary, but not more than was to be expected when a draught of this size collided with another draught, and that that happened every day.

The Court: I will excuse the jury for about five minutes.

(The jury retired from the court room and discussion was had between Court and counsel on the motion hereto- [fol. 97] fore made, after which the jury returned and the following occurred.)

The Court: I will overrule the motion at this time.

Mr. Allen: I respectfully except.

The Court: Tell the jury they may return.

(Jury returns to court room.)

Lyman L. Lister, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Allen:

Q. Mr. Lister, you are employed by the Pennsylvania Railroad Company, are you?

A. Yes, sir.

Q. As what?

A. Draughtsman.

Q. You have been employed how long?

A. Since July of 1918, about fifteen and a half years.

Q. I call your attention to this survey, Plaintiff's Exhibit No. 1; did you prepare that?

A. Yes, sir; I did.

Q. From what?

A. Enlarged a small tracing after taking measurements in the field.

Q. When you say in the field, you mean at the yard?

A. At the yard; yes, sir.

Q. Was that Plaintiff's Exhibit 1 made to scale?

A. It was.

Q. What was the scale?

[fol. 98] A. One inch equals forty feet.

Q. Will you give me certain measurements, Mr. Lister? Will you give me the distance from the point marked No. 2 hump to the west end of the yard office?

A. That is about 180 feet.

Q. What is the long dimension of the yard office from west to east?

A. That is 78 feet.

Q. What is the distance from No. 2 hump to the beginning of the track, the ladder track leading into No. 14 track? Is this the beginning of the ladder, the first switch east of the hump?

A. That is where the ladder track enters.

Q. Give me the distance from the hump to the first switch east of it.

A. That is about 90 feet.

Q. And the distance to the next switch east of it?

A. 247 feet.

Q. The first switch east, will you mark that one, in a circle, and the distance you have given from the hump to the switch was 90 feet?

A. Yes. (Witness marks on blueprint Exhibit 1.)

Q. The distance from the hump to the second switch we will mark with two, the figure two.

A. (Witness marks on Exhibit No. 1.)

Q. That distance is what?

A. 246 feet.

Q. The distance from the hump to the switch which we will call the three switch, what is that?

A. 360 feet.

Q. The distance from the hump to the switch which we will call the four switch?

A. 458 feet.

Q. And the distance from the hump to this switch which we will call the five switch?

A. 555 feet.

[fol. 99] Q. And the distance from the hump to this switch which we will call No. 6?

A. 650 feet.

Q. And the distance from the hump to this switch which we will call seven?

A. 747 feet.

Q. That switch which we will call seven, is the switch that leads into Track No. 14?

A. Yes.

Q. What is the distance from the front of the yard office to the ladder track which No. 14 leads out of?

A. Across this way (indicating)?

Q. Yes?

A. That is about 50 feet to the near rail.

Q. Do you know anything about the grade of that hump?

A. No, I do not outside of what we had on the office records, and I didn't check that.

Q. The grade to the west of the apex of the hump is an up-grade?

A. Yes.

Q. And the grade to the east is a down grade?

A. Yes, sir; it starts off sharp, then diminishes until it gets down to the yard track, and then a slight grade in the yard.

Q. Do you know about where the sharp grade ends?

A. No, I couldn't tell you that.

Q. About how far is it from the switch which we mark No. 7 leading into No. 14 track to the end of that track, give us the total length from the switch marked seven to the east end of that track?

A. That is about 1700 feet long.

[fol. 100] Cross-examination by Mr. Sansone:

Q. Can you tell us how far it is from the point that you call the apex of the hump down to the bottom of the run of the hump, that portion referred to as the hump proper, from where it begins to where it ends—how long a distance is that?

A. (Indicating.) This hump starts in here somewhere, and they push it up-grade to a point here, then she starts down with a sharp grade. I had some grades in there I took off of the plan.

Q. Will you mark the letters T. H., indicating the top point of the hump, the highest point, mark where that is.

A. That is right in here; that is your hump right there (indicating).

Q. In oher words, where it says, "checking signal"; as you have marked the letters T. H., that indicates the apex of the hump?

A. Yes, sir.

Q. As you come from the west going easterly, the grade is a very gradual upgrade?

A. Upgrade to here; yes, sir. (Indicating.)

Q. You say you first looked at a small map, then you went over and took measures on the location, so that you could make up this map?

A. Yes, sir; I started back in here (indicating). I measured this track all of the way there down to the point there (indicating).

Q. Now, would you try to approximate for us the extent of the grade going from the extreme left on the westerly end of the map to the point marked with the letters T. H.

[fol. 101] A. I couldn't say that.

Q. It is not steep, is it?

A. No, for instance, in here I took these grades off of a plan which is pretty near right. There is a 3 per cent grade, and she goes into 3.2 per cent grade.

Q. That is on the east?

A. Yes, sir.

Q. I am on the west now. Could you approximate it for us from the point T. H. to the westward?

A. I imagine—that wouldn't be any good, though. I should think starting from this yard and raising to that point here, you mean?

Q. Yes, approximately that.

A. You want the distance in there. Right in there from my experience in railroading your grade would start in there.

Q. All I want is for you to give it to us approximately, is it 1 per cent or half of 1 per cent?

A. Yes, I should think a 1 per cent grade.

Q. That distance from where the grade starts to the point T. H. is what distance, you think?

A. About 360 feet.

Q. And that would be a rise of about three and a half feet on 360 feet?

A. Yes, it would.

Q. A foot to a hundred feet, that is 1 per cent?

A. Yes, that is right, 1 per cent grade.

Q. Now, from T. H. east, how far does this hump proper that you refer to as the hump, how far does that extend east?

A. The only thing I could tell you is from what I have to measure. On a sharp grade it would not run down over a hundred feet and from that she goes on gradually. It will [fol. 102] run about a 3 per cent grade for a hundred feet.

Q. In that hundred feet you have about three feet of drop?

A. Yes, sir.

Q. And you said something from there on runs 2 per cent?

A. No, that don't run 2 per cent.

Q. From this point where you have got a drop of 3 feet in a hundred, how does it go from there east?

A. That wouldn't be over 1 per cent grade. From there on.

Q. Does that continue through the yard?

A. No, she comes down here and according to our records that is only 79/100 per cent.

Q. Taking the entire length of Track 14 for that 1700 feet, is there a continuous downgrade all the way to the east end of that track?

A. I couldn't tell you that exactly, but I imagine there is a slide grade on down.

Q. Ranging from the 3 per cent gradually down to 1, then you say 79/100, and then graduating down?

A. Yes, sir.

Q. Of course, the purpose of that drop grade there is to get the cars started to get them down into the tracks where they belong?

A. Yes, sir.

Redirect examination.

By Mr. Allen:

Q. About where does that 79/100 grade start, according to the records?

A. I couldn't tell you that exactly; all I had, there was about 3 per cent, then 3.2 per cent for about a hundred feet, [fol. 103] then it gradually goes down to 79/100, but I didn't check them in the field.

Recross-examination.

By Mr. Sansone:

Q. You say from there (indicating) it is 3.2?
A. There, is one plus in there, and this is 3.2 per cent here (indicating).

Mr. Allen: Is that in the first 100 feet?
The Witness: Yes, in the first 100 feet.

Benjamin F. White, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Allen:

Q. Mr. White, you are employed by the Pennsylvania Railroad Company?
A. Yes, sir.
Q. As what?
A. Conductor, now.
Q. And in November, 1929, what was your employment?
A. Brakeman.
Q. What service were you in?
A. Freight service, cutting cars on the hump.
Q. Are you still in the freight service?
A. Yes, sir.
Q. On November 3, 1929, where were you employed?
A. West Morrisville yards.

Q. What work was being done that afternoon?

[fol. 104] A. Classifying cars over the hump.

Q. Do you remember what time you came on?

A. What time I went on duty?

Q. Yes?

A. I think it was 7:30 in the morning, if I am not mistaken.

Q. Were you engaged in the work of classifying cars into what is known as Yard A?

A. Yes, sir; at that time.

Q. That is eastbound yard?

A. Yes, sir.

Q. That was then used for that purpose in 1929, is that right?

A. Yes, sir, two yards used, but that was the one used when this case was on.

Q. What was your job ?

A. Cutting cars on the hump.

Q. How long had you been employed by the company?

A. 22 years now.

Q. What do you mean by cutting cars on the hump?

A. Pulling pins, or cutting cars, leaving them go down on the hump, with the droppers on them.

Q. By droppers you mean men that ride on the cars?

A. We call them car droppers.

Q. The cars you would cut at the hump, were coming from which side of the hump, the west or the east?

A. From the west.

Q. Do you know about how many cars there were when you started this operation of classification?

A. I couldn't tell you that, I imagine 35 or 40 all told.

Q. Before you started this movement of classification what is done as regards marking the cars?

A. They are marked on the end so that the car droppers [fol. 105] and the car cutter knows what is in the cut.

Q. Who does that?

A. They have no man specified for that work, it is a brakeman that does that work.

Q. Do you know how many cars are to be in each cut?

A. I do when I get to the end of the cut.

Q. Do you have some memorandum to go by to give you the numbers?

A. The conductor has that, and the cutter does that by the marks, and if he goes wrong the conductor puts him right.

Q. Before the cars are cut off at the hump, are the riders on the cars?

A. Yes, sir.

Q. They get on before the cut is made?

A. Yes, sir.

Q. Now, in this operation I suppose you know the number of car droppers or riders?

A. How many there are of them?

Q. Yes.

A. We know there is men on all of the cuts that goes off. We know how many there is, of course.

Q. I mean you have a number of men who do this work, that ride one cut down and come back again and pick up another cut, is that it?

A. Yes, sir.

Q. Now, Mr. White, do you remember this November 3, 1929?

A. Yes, sir.

Q. What kind of a day was it?

A. It had been raining, it was misty then and a bad, nasty night, or evening.

Q. As a car cutter where were you standing this night, which side of the cars as they came up to the hump?

[fol. 106] A. On the south side. You don't stand, you move.

Q. What do you mean by that?

A. Keep going with the train, as you make a cut, then walk back and make another you go back and forth.

Q. When the classification is started, the engineer is given a signal to start over the hump?

A. Slowly, yes.

Q. And it is your job to make the cuts as they come along?

A. Yes, sir.

Q. And that is a continuous performance from then on?

A. Yes, sir; unless something happens.

Q. When the riders get on the cars, do they test the brakes?

A. Yes, sir.

Q. If there is anything the matter, what do they do?

A. Notify the car cutter or the conductor, or both, that the brake needs adjusting.

Q. Then what would you do?

A. Stop the train and fix it up.

Mr. Sansone: Stop the train and do what?

The Witness: Fix the brake up; the chain may be down at the bottom, or things like that.

Mr. Sansone: You fix it right there?

The Witness: Yes.

Q. After the classification starts, you say you keep walking back and forth?

A. Yes, sir.

Q. In order to make the cuts according to the numbers, is that right?

A. Yes, sir.

Q. Do you recall about what time this accident to Mr. [fol. 107] Chamberlain occurred?

A. To the best of my knowledge it was around five o'clock, near five o'clock.

Q. The men weren't using lanterns at that time?

A. Not yet, no, sir.

Q. Prior to Mr. Chamberlain's cut, do you know whether any cut had gone in on No. 14 track?

A. No, I couldn't tell you that.

Q. Do you know any car cutters by the name of Jetter and Geddes?

A. Car droppers, you mean, yes.

Q. Were they working there that night?

A. Yes.

Q. Do you remember when Mr. Chamberlain's cut was made?

A. I remember that, yes.

Q. That was for what track?

A. 14.

Q. Did you make the cut?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. Now, before the cut was made was Chamberlain on a draught?

A. Yes, sir.

Q. What part of the draught?

A. On the west end of the second car.

Q. There were two cars in the draught?

A. Yes.

Q. Where was the brake on this second car?

A. The west end.

Q. Do you know where the brake was on the other draft car?

A. On the head end.

Q. That would be the east end of the first car.

A. Yes.

Q. What kind of cars were they?

A. G. R. A. gondolas.

Q. Were they loaded?

A. Yes, sir.

Q. With what?

A. With gravel.

[fol. 108] Q. Before you made this cut, did Mr. Chamberlain make any comment about his brakes, make any remark at all?

A. He didn't say anything to me.

Q. Where was your conductor?

A. He was standing right there at the hump, by the signal where he could see what is going on.

Q. At the time the cut was made about how fast was this draught moving?

A. At the time we were shoving over between two and three miles an hour, I judge.

Q. That is about the speed the cars come up to the hump?

A. That is about the way they shove them over.

Q. That was the usual and regular way of doing it?

A. Yes, sir.

Q. Now, after his cut was made, do you remember where the next cut went?

A. For 20, the best of my knowledge.

Q. Do you know who was riding that?

A. I think Brakeman Ashmore.

Q. Did you make that cut?

A. Yes, sir.

Q. On which side of No. 14 track is No. 20, south or north?

A. That is to the south; they start from 12 and go all of the way over to 28.

Q. Was there one man riding that draught?

A. Four cars, yes.

Q. What was the next cut after that four-car cut that Ashmore rode?

A. That was nine-car cut for 14.

Q. Where were you when you made that cut of the nine cars?

A. Back west of the hump far enough to get the pin when [fol. 109] the slack was on, west of the hump to make the cut. You have got to be west to make the cut.

Q. There is a slight incline as you come up to the hump?

A. You have got to get them when the slack is there, and if you don't they move away, and you don't cut them.

Q. As they come to the apex of the hump, there is no slack?

A. No, enough cars get over so that it pulls the hind end over.

Q. And you have to pull them when?

A. In a nine-car cut about half of the cut has to be over before the others will over.

Q. Then you were about four or five car lengths west of the hump when you made the cut of the nine cars?

A. Yes.

Q. Do you recall who was riding those cars?

A. No, I couldn't tell you who was on them, but it was all old car droppers.

Q. What is that?

A. It was old car droppers, men that had been around there for years.

Mr. Sansone: You say old men were riding them?

The Witness: That is, the regular car droppers.

Q. When you have a cut of nine cars, according to the practice of the yard, tell us how many brakemen ride it?

A. It is according to the kind of cars they are. If they are heavy cars you will put maybe three on, and if lighter, put two men on. That is really a two-man cut, nine cars.

Q. Did you then, after you had made this cut of the nine-car draught, make any other cut?

[fol. 110] A. I think there was other cuts afterwards, but that is getting too far back.

Q. About how long a time was there between the time you cut off Chamberlain's cut and Ashmore's cut, we will say?

A. Well, now, going two miles an hour I could not hardly tell you that because that cut has got to clear and get out of the way before the four-car cut could be made, and I had to walk back myself, and it must have been a minute or so.

Q. I don't suppose you can tell us what time elapsed between the time of the Ashmore cut, and the nine-car cut?

A. It would be a hard thing to figure.

Q. The train was moving, the draught was moving continuously up toward the hump all of the time?

A. Yes, sir.

Q. Did you hear about the accident?

A. I heard about it, yes.

Q. Did you see anything that occurred down in the yard around 14 track yourself?

A. I didn't have occasion to go down there, but I helped pull the train out of the way to get the motor car off.

Q. How did you hear of the accident?

A. Some of the brakemen notified us; come by and told us.

Q. Did you then stop your drilling classification?

A. Yes, sir.

Cross-examination.

By Mr. Sansone:

Q. Mr. White, you say that you were with the company [fol. 111] 22 years?

A. Yes, sir.

Q. During that 22 years you were with the company, have you ridden cars down into the yard?

A. Most of the time that is what I done.

Q. The job is to ride cars into the various tracks?

A. Yes, sir.

Q. And the purpose of your riding them in is so that when the cars come down in the yard and are going to come together with other cars they will come together easy?

A. You retard the speed of them so that they won't damage the car.

Q. In other words, the idea is to go in there gradually, and keep slowing them down so that they don't knock together at a fast rate of speed, is that right?

A. Yes.

Q. And the idea and purpose of it is so that property is not damaged, right?

A. Yes, sir.

Q. And when you say you are supposed to come together at a slow rate of speed, what is the speed you have observed with which those cars are supposed to come together?

A. Two or three miles an hour.

Q. And the coming together at two or three miles an hour, that is the usual speed at which they are supposed to come together, right?

A. Or less, it wouldn't hurt.

Q. Or less if you can?

A. Yes.

Q. And if you can get them down to one mile an hour when they come together, it is better?

Mr. Allen: I object to that, if the Court please.

[fol. 112] The Court: That is argumentative, go ahead.

Q. I think you said, Mr. White, where you have a draught of nine cars you might have two or three men on, right?

A. Yes.

Q. And the reason for that, of course, is it not, that some cars run a little faster than others?

A. It is a question of the weight of the cars. A heavy load you might put more men on.

Q. You know that where you have a heavy load, or a heavy draught, they move much faster than a light load?

A. Sure.

Q. What?

A. Yes, sir.

Q. Who determines when you are starting down with nine cars as to whether you are going to have two or three, as you sometimes have?

A. The brakeman, that is the conductor, he sees to that, he puts them on himself.

Q. In other words, the conductor if he thinks two men can't regulate the speed of the cars he will put three on?

A. He may, yes.

Q. What I am asking now is just what is there to determine when you will put three on, to regulate the draft, or when you will put two on?

A. Well, if they are old men, old brakemen, they would know themselves; any brakeman would know if he had been on the road for a little while, whether they would be all right or not.

Q. The brakeman doesn't know how much these cars weigh, or how much tonnage they have got.

A. He knows pretty well what they have got if he has [fol. 113] been on there a while.

Q. Is it the brakeman that determines when he gets up there whether they will have two or three?

A. Most of the time.

Q. Who determined it the day of this accident?

A. Determined what?

Q. Who decided before the accident they would only have two men ride down—how many cars were there anyway?

A. When was that?

Q. At the time this big draught went down there on 14 track following Mr. Chamberlain?

A. Who determined?

Q. Yes, who determined that day?

A. I couldn't recall now who said to put two or three on.

Q. Of course, three could regulate the speed much better than two?

Mr. Allen: I object to that question.
The Court: Sustained.

Q. How many cars did you say was in that draught?

A. Nine.

Q. Do you know how many tons of gravel those cars hold?

A. Do I know?

Q. Yes.

A. I couldn't tell exactly, but I suppose about 70 tons.

Q. 70 tons apiece?

A. Or 60, something like that.

Q. When you say 70 tons, you are talking of contents?

A. That is the whole business.

Q. When you say each car has an aggregate of 70 tons, does that mean only the load that is in there?

A. The capacity is 60, or 50 tons—50 tons, and the car [fol. 114] weighs 20 tons, that is about it.

Q. Just as soon as you get those cars representing 70 tons apiece—just as soon as that starts over the top of the hump there is a pull-down on the draught, isn't there?

A. Oh, yes, it starts to pull down, but the duty of the brakeman is to hold them back.

Q. Of course, the brakeman can work just one brake at a time?

A. Naturally.

Q. Just as soon as two get over, that train on the lower end gets heavier?

A. Yes.

Q. And when a draught of nine cars is going over, how many cars get over before they separate?

A. Before they what?

Q. Before the nine cars separate from the rest of the train.

A. That is according to how many brakes is on ahead of them, and they don't always work the same.

Q. Do they keep putting those brakes on and taking them off, as they proceed down?

A. That is the idea, if they get them on too tight, they take them off a little and go down, and keep it under control.

Q. When they have nine cars the men have to go from one car to another to keep the brakes on the regular speed?

A. Three men ought to check the cars if the cars had good brakes, more than likely.

Q. If three men had three good brakes?

A. Yes.

Q. How many brakes would two men have to put on?

A. That is according to how the brakes work.

[fol. 115] Q. So that when you start two men over it is up to them to operate the brakes on those nine cars in such a way that they can keep them under control, right?

A. Yes, sir.

Redirect examination.

By Mr. Allen:

Q. When cars are sent in on to a track, if there are any cars on that track, it is usual for the cars that are sent in to go against the cars on the track, is that correct?

A. Yes, sir.

Q. You send them down on the track to fill up the track?

A. Yes, sir.

Q. The first cars on the track go as far east as possible, is that right?

A. Yes, sir.

Q. Then you fill them up as the other cars go in on to that track?

A. Yes, sir.

Q. And each draft is supposed to come against the one ahead of it on the track?

A. Yes.

Q. Did you hear any impact of these cars at all?

A. Not from where I was.

Paul B. Edinger, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Allen:

Q. Mr. Edinger, you are employed by the Pennsylvania [fol. 116] Railroad Company?

A. Yes, sir.

Q. As what?

A. Brakeman.

Q. About how long have you been so employed?

A. 1909.

Q. Where are you at present working?

A. Morrisville yard.

Q. Now?

A. Not now.

Q. Where are you working now?

A. I am braking out of Philadelphia.

Q. In November, 1929, where were you working?

A. West Morrisville yard.

Q. On the evening of that day around five o'clock, what kind of work were you doing?

A. I was throwing switches.

Q. For what purpose?

A. To classify cars shifted over the hump.

Q. And in what part of the West Morrisville yard was that work being carried on?

A. On the eastbound, A, yard.

Q. There are how many tracks, do you know, down there?

A. They run from 7 to 28.

Q. And then there was a ladder north of the yard-master's office, one to six?

A. One to six, that comes in above the hump.

Q. What did you say your job was in this classification this night or evening?

A. Throwing switches.

Q. What kind of afternoon was it?

A. It had been raining a little, drizzling rain earlier. It was not raining around five o'clock, just drizzling.

Q. Whereabouts were you when you were throwing switches?

A. I was at 18 switch.

Q. By that, you mean the switch leading from the ladder [fol. 117] track into No. 18 track?

A. (Indicating on Plaintiff's Exhibit 1) Here.

Q. At the switch marked 3 on this diagram?

A. Yes, sir.

Q. Now, before you took up that position at 18 switch, had the classification movement started, or did you go down there before the train started to move?

A. I go down before the train starts and set the switches up.

Q. Do you know what tracks the cars that are in the train are going onto?

A. Yes, sir.

Q. Who do you get that information from?

A. The yardmaster generally gives me a copy of the slip, a cut slip.

Q. Do you know how those cars are lined up in the train that is coming over the hump?

A. Yes, sir.

Q. The order that they are in, do you know that?

A. Yes, sir.

Q. And you know what tracks they are supposed to go on?

A. Yes, sir.

Q. And you arrange the switches so that they can go into the tracks they are required to go on?

A. Yes, sir.

Q. Now at the time the movement of classification started, you were standing at this point, No. 18 switch?

A. Yes sir.

Q. Did you know Mr. Chamberlain, the deceased?

A. I didn't know him until he came over there.

Q. What is that?

A. I didn't know him until he came to work over there.

Q. You knew him on this day, did you not?

A. Yes, sir.

[fol. 118] Q. Do you remember a draught ridden by him, over the hump that afternoon?

A. Yes, sir.

Q. Where were you standing at that time?

A. At 18 switch.

Q. At this point you have indicated on Exhibit 1?

A. Yes, sir.

Q. Prior to Mr. Chamberlain's draught coming over the hump had any draught gone in on No. 14 track?

A. Yes, there was one cut went down, the first cut out of the train, I believe went down there.

Q. About how many cars in that?

A. A five-car cut.

Q. Do you know who rode that?

A. I think Jetter and Geddes.

Q. Wasn't that a seven-car cut?

A. I think it was five; I know there was two men on it.

Q. That was the first cut off of the train, went in on 14 track?

A. Yes, sir.

Q. After that first cut went in on 14, were there cuts before Chamberlain's cut?

A. Yes.

Q. Do you recall how many cars were in Chamberlain's cut?

A. Two cars.

Q. Did you see Chamberlain's cut coming down from the hump?

A. Yes, sir.

Q. Did you see where Chamberlain was?

A. Yes, sir.

Q. Where was he?

A. On the west end of the second car.

Q. Where was the brake on this second car?

A. On the hind end.

Q. Which would be the westerly end?

A. Yes, sir.

Q. Where was the brake on the first car?

[fol. 119] A. The east end of the head car.

Q. As this cut of Chamberlain's came down towards you, did you observe how fast it was going?

A. Yes, sir.

Q. About how fast was it going?

A. Fifteen miles and better.

Q. Did you say anything to Chamberlain?

A. Yes, sir.

Q. What did you say?

A. I hollered to him to go get them.

Q. What?

A. I hollered to him to go get them.

Mr. Sansone: What is that?

The Witness: I hollered to him to go get them, they was getting away from him.

Q. Is that language that you use in the yard?

A. Yes, sir.

Q. What does that mean?

A. Get after them, put the brakes on.

Q. These cars were loaded, were they?

A. Yes, sir.

Q. They were gondola cars?

A. Yes, sir.

Q. Where was he as regards you when he was going fifteen miles or better and you hollered to him to go get them?

A. I was at 18 switch.

Q. Where was he?

A. Going by me.

Q. Going past you?

A. Yes, sir.

Q. What, if anything, did you see him do?

A. When I hollered at him he jumped up and ran across to the head brake at the east end.

[fol. 120] Q. Ran across what?

A. Two cars.

Q. You mean the top of the load?

A. Yes, sir; right over the top.

Q. Did you see where he got to on the first car?

A. Yes, sir; I saw him get down and start to work at the brake.

Q. On the head car?

A. Yes, sir.

Q. Did you watch that draught then at all?

A. Yes, sir; I watched it down as far as I could see.

Q. How far could you see from the point you were at?

A. After he headed in on 14.

Q. You could see down to where he went in on 14?

A. Yes, sir.

Q. Could you tell how fast they were going when he went in on 14?

A. I couldn't tell how fast they were going down there, but I seen he had them checking up.

Q. Slowing up?

A. Yes, sir.

Q. After his draught passed you, did any other draught come down?

A. Yes, sir.

Q. Do you recall where that draught was going to?

A. Four-car cut I think, went down to twenty.

Q. Do you know who rode that?

A. Mr. Ashmore, I think.

Q. At the time that draught came where was Mr. Chamberlain's draught?

A. He was down out of sight.

Q. He was out of sight down 14 track, is that right?

A. Yes, sir.

Q. After Ashmore's draught, did another draught come down?

A. A nine-car cut.

Q. Where did that come?

A. It went down 14.

[fol. 121] Q. 14 track. That passed you, did it?

A. Yes, sir.

Q. Do you remember how many riders were on that?

A. Three.

Q. Now, as that passed you, about how fast were they going?

A. Going about six to eight miles an hour.

Q. Did any draught come down after that nine-car draught?

A. After the nine-car draught; yes, sir. There was another, a couple of more draughts came down, but I didn't notice where they went.

Q. At the time this nine-car draught passed you at the switch leading into 18 track which is marked 3 on Plaintiff's Exhibit 1, was Chamberlain's draught down on No. 14 track?

A. Yes, they was gone out of sight, I didn't see him.

Q. You couldn't see them from where you were at 18?

A. No. sir.

Q. Now, what next attracted your attention, if anything?

A. What is that?

Q. Did anything after that attract your attention?

A. No, I stood and listened for them, to see if I could hear anything hit down there, and I didn't hear nothing.

Q. You were listening to see if anything hit?

A. Yes, sir.

Q. What caused you to listen to that?

A. Because the draught went by me too fast.

Q. Which draught?

A. The one Mr. Chamberlain was riding.

Q. You didn't hear any impact where you were standing?

A. No, sir.

[fol. 122] Q. And after the nine-car draught went by, did you hear any impact?

A. No, sir.

Q. Do you know whether there were any cars on the east end of No. 14 track before the first one went down there?

A. No, sir; I don't know that.

Q. Now, did anything attract your attention after that, did you hear of any accident?

A. Not until Mr. Allen come up and said Mr. Chamberlain was hurt.

Q. He was one of the car droppers?

A. Yes, sir.

Q. Do you know what draught he was on?

A. He was on the nine-car cut.

Q. He was one of the men on the nine-car cut?

A. Yes, sir.

Q. Then what did you do?

A. Come up and got a stretcher and went down and got him.

Q. Where did you go?

A. We went in on 15 track, right alongside of him.

Q. Where was he when you got down there?

A. Laid in between the tracks.

Q. Between 14 and 15 tracks?

A. No, right in on 14.

Q. About how far in from the switch leading into 14 was Mr. Chamberlain when you got there?

A. I judge around about six cars.

Q. Where was the end of the nine-car draught?

A. It went over him about eight or ten feet, the other side of him.

Q. You mean east?

A. Yes, sir.

Q. Did you go down to the east end of that draught?

A. No, sir; I did not.

Q. At any time?

A. No, sir.

[fol. 123] Q. What did you do then with Mr. Chamberlain?

A. We picked him up and put him on the stretcher, dressed him up and sent him to the hospital.

Q. I suppose the work of drilling these cars over the hump was stopped while you were taking Mr. Chamberlain up here, is that right?

A. Yes, sir.

Q. At any time after the accident to Mr. Chamberlain, did you go down to see the cars on 14?

A. No, sir; I did not.

Q. Did you hear anybody holler down there?

A. No, sir.

Q. At the time the nine-car draught passed you, were the three brakemen on it?

A. Yes, sir.

Cross-examination.

By Mr. Sansone:

Q. Did you hear Mr. White testify just now that there were only two men on that draught?

Mr. Allen: I object to the question because it is not properly quoting the testimony, and also it is immaterial what he heard the other witness state.

Mr. Sansone: If I am not properly quoting the testimony I would like to have that disposed of now, because that is what the man said, that there were two men on that draught.

The Court: What difference does that make, this man testifies there were three.

[fol. 124] Mr. Sansone: I am going to object to the statement made by Mr. Allen that I am misquoting the testimony.

Mr. Allen: I didn't say you misquoted it.

The Court: Proceed, gentlemen.

Q. What were the names of those men on the nine-car draft?

A. Mr. Stout.

Q. Is he in court today?

A. I don't know if he is or not.

Q. Who else?

A. Oscar Reeves.

Q. Is Mr. Reeves in court today?

A. I guess he is.

Mr. Allen: No, he isn't here today.

Q. Who was the other man?

A. Mr. Allen; Howard Allen.

Q. What was the name of the man that led that draught down just before the nine-car draught?

A. Down 14?

Q. No, that one down 20.

A. The four-car draught, Mr. Ashmore.

Q. Now, Mr. Edinger, just which tracks or what switches did you have charge of on the day of the accident?

A. 18 switch to 14, and from 19 switch to 24 and 28.

Q. What is that now?

A. 18 to 14, 19 to 24—23 I think, on that ladder, and then 26, 27 and 28 on another ladder.

Q. So, all told you had how many switches to take care of?

A. 24 to 28 on this ladder, 18 to 14 here, and here then is the dividing switch (indicating).

[fol. 125] Q. Will you step here a minute, Mr. Edinger, and show us the switch you have got to throw in order to let cars go into 20?

A. Here is 20 (indicating on Plaintiff's Exhibit 1).

Q. Will you just mark 20 right there for the switch you have to throw to get in there?

A. (Witness marks on Plaintiff's Exhibit 1.)

Mr. Sansone: Now, let the record show the witness indicates by the figure 20 with an arrow pointing to the switch and that is the switch that must be thrown in order to let cars go in on Track 20.

Q. Now, will you mark here for us the switch No. 18?

A. (Witness marks on Plaintiff's Exhibit No. 1.)

Mr. Sansone: Let the record show that the witness marked the letter "X" and line 18 showing the switch that must be thrown for No. 18 track.

Q. Now, on the first batch of cars that went in on Track 14, the one before Mr. Chamberlain rode in, how many riders were on that?

A. Two.

Q. How many cars?

A. I think it was five.

Q. Now, is there any question about it?

A. No, I ain't sure, might have been seven.

Q. What?

A. Might have been seven. Five or seven.

Q. Might there have been one brakeman on there?

A. No, sir.

Q. You say there were maybe five to seven cars, in the [fol. 126] first one?

A. Five to seven; seven cars is a two-man draught.

Q. What I am asking is how many cars were in there, not as to how many men belong on a cut.

A. A five-car cut went in ahead of him.

Q. What is the seven you are telling us about?

A. You asked me how many cars and I told you either five or seven car cut went in ahead of him.

Q. You are not sure of that as to the number?

A. No.

Q. Where were you standing when that draught of cars went by you?

A. Right there at 18 switch.

Q. Did you have to throw that switch to allow those cars to go into 14?

A. No, sir.

Q. Just which cars were those two men standing on? The first ones that went into 14?

A. I couldn't tell you that now, just where they were riding.

Q. Was there one on the head car and one on the rear?

A. They generally ride one near the head end and one near the hind end.

Q. I know they do that to regulate their brake sometimes, but I am asking you about these cars and where they were riding on them when they went by you.

A. If a man is on the first car and a man on the last car they wouldn't have to move.

Q. What is that?

A. If there was a man on the first car and a man on the last car they wouldn't have to move to take the draught down.

Q. I am not asking you what could be done, but I am asking you, as you recall, where were the men that went by [fol. 127] on that draught that went in on 14?

A. I am not sure now.

Q. You are sure there was two?

A. I know there was two on it, but I didn't take particular notice where they were riding.

Q. Just as they went by you how fast were they going?

A. Not so very fast, a five-car cut they had, and they had their cut under control when they went down.

Q. I am asking you how fast were they going when they passed you at switch 18?

A. Around six or eight miles an hour.

Q. Do you recall that, or is that what they usually do?

A. That is the way we ride.

Q. What?

A. That is the way we ride if we have got the cut under control.

Q. Are you telling us now the way they usually do it, or what you definitely recall was done that night?

A. That is the way we ride them all of the time if we have got them under control.

Q. You are telling us that is the way they ordinarily do it, or are you telling us that because you remember that is the speed they were going in?

A. That is the general way we ride all the time.

Q. You have no definite recollection how fast they were going that night, but are simply telling us what they usually go in at?

A. I know the cut didn't go fast because it didn't attract my attention. Any cut going above the minimum limit, it would attract my attention to it.

Q. What is the limit going down there?

[fol. 128] A. Going down between six, eight and ten miles an hour wouldn't be so bad, but going down 15 or 20 miles an hour you know the man hasn't got it under control.

Q. What is the regular limit to go down?

A. Six to eight miles an hour.

Q. If they have got to go all of the way to the other end of the track, they go down faster, don't they?

A. No, they don't have to go any faster.

Q. You know in the winter time they don't roll so good?

A. Not in the cold, no.

Q. In cold weather they don't ride so good?

A. Then, you will brake accordingly.

Q. And when you are braking accordingly and they don't roll so good, you let them go down faster so they will get in to where you want them to go?

A. You don't let them get away from you.

Q. When it is cold and they have to go to the other end of the track do they let them go off of the hump faster than when they are rolling good?

A. You don't have to do that.

Q. Do they?

A. No, sir.

Q. Whether you are going down in the winter when it is slow, or whether you are going down in the summer, you go down just the same rate?

A. In the winter you don't have to put the brake on so much as you will have to in the summer, you have to put the brake on to hold them down.

Q. The extent to which they use the brakes is determined somewhat by the weather and how the cars are running?

A. Yes, sir.

[fol. 129] Q. And the speed at which they go down from the hump is determined by how far they are going into the track?

A. Yes, sir.

Q. Let's take No. 20, for instance, up here where you have indicated; if that track was pretty well filled up so that you could only get two or more cars in they would come down much slower than if they were going all of the way to the easterly end of the yard, wouldn't they?

A. Sure.

Q. So as to the usual speed, there is no usual speed of their coming down as a matter of fact, is there?

A. He can go——

Q. Listen to my question, there is no usual speed for them to go down from the hump?

A. No, they are no usual speed.

Q. You know the idea is when cars come together to have them come together slowly so there won't be much danger of damage done to the cars?

A. Sure.

Q. Now you know that a big draught with a heavy load goes down much faster than a lighter one?

A. If you let them go, but if you put the brakes on they won't go any faster.

Q. As this draught was going down which car was Mr. Stout on?

A. He was on the second car.

Q. From what end?

A. From the west end.

Q. That is the next to the first one as he went down the hill?

A. That is when he went past me.

Q. Did he stay there all of the time?

A. I think he walked up ahead, but I ain't sure.

Q. You say he was on the second car from the west end, [fol. 130] was he on the east end of that car or the west end?

A. I don't know, I wouldn't say which end he was on.

Q. What?

A. I didn't pay much attention. I don't remember which end he was on, but he was on the second car.

Q. Whether he was on the east end or the west end you don't know?

A. I don't know which end he was riding.

Q. Was he at his brake then?

A. When he went by me, yes.

Q. Was he applying the brake?

A. I didn't take notice of him applying the brake.

Q. Did he have his hands on the brake?

A. I don't know, he may have had the brake on, standing there.

Q. My question was did he have his hand on the brake?

A. Certainly he had hold of the brake.

Q. You say he left there and went some other place?

A. He walked ahead, I ain't sure.

Q. How far ahead did he walk?

A. He only had one more car to go.

Q. Then what did he do, did he walk up to the brake on the next car?

A. I didn't take notice.

Q. What?

A. I didn't take notice, I didn't have time to watch all of that.

Q. Of course, his duty is to stay at the brake to regulate the speed of the draught?

A. He had two more men to help him.

Q. I am talking about him. You say you saw him leave his brake and walk ahead?

A. Yes, sir.

Q. How far did you see him walk east?

[fol. 131] A. I didn't notice how far, but he could only walk up one car.

Q. Did he go on the next car?

A. On the next car, yes.

Q. Did he go over the entire length of the car?

A. I didn't take notice.

Q. Where was the brake on that other car, as to whether it was on the east end or the west end?

A. I couldn't take notice how the brake was on that.

Q. Now, as the draught went by you, what car was Mr. Reeves on?

A. I couldn't tell you, he was somewhere in the draught, but I couldn't tell you what car.

Q. Let's have it this way, will you tell us what car Mr. Allen was on?

A. He was on the second car when he went by me.

Q. We are talking about Mr. Allen. You say Mr. Stout was on the second car?

A. Oh, Mr. Allen was on the hind car.

Q. That is the last car?

A. Yes, sir.

Q. Mr. Allen was there?

A. Yes, sir.

Q. How many cars away from Stout was Mr. Reeves?

A. I couldn't tell you. They only had nine cars, and they can't be far apart.

Q. Then you say Mr. Allen was on the last car, that is the west of the car?

A. Yes, sir.

Q. And Mr. Stout was on the very next car to him or the second car from the west end?

A. I said he was on the head of it, the east end.

Q. Didn't you tell us a little while ago, and if you are mistaken I want you to correct yourself—didn't you tell [fol. 132] us a while ago Mr. Stout was on the second car from the west end?

A. On the east end, he had the head end of the cut.

Q. If you said the west end a little while ago, you were mistaken?

A. I said the west end of the car.

Q. If you said the second car from the west end, that was inadvertent, let's have it that way, right?

A. Yes.

Q. So that now we have it as the draught was going down the hill Mr. Stout is on the second car going down the hill Mr. Stout is on the second car going down on the west end of that car, right?

A. Yes, sir.

Q. Now, when he started to walk, did he walk back west or did he walk east?

A. He walked east.

Q. Of course, there was only one car ahead of him?

A. Yes, sir.

Q. Did he walk out to the end of the draught?

A. I didn't take notice how far he walked, I noticed he got up on top of it.

Q. Just how far from where you were was it that Mr. Stout started walking over the front car?

A. I was at 18 switch, and he was down below 16 switch when I saw him walking.

Q. He was on the west end of the second car as he went by you at 18, and when he got down to the switch leading into 16 he walked forward on the first car?

A. Yes, sir.

Q. Do you remember as the draught went by you, was that brake on the first car at the east end?

A. I couldn't tell you, I didn't take notice.

[fol. 133] Q. Did he get up to that brake?

A. He was up on top, and I didn't watch him.

Q. As the draught went by you, you say it was going at what speed?

A. Six to eight miles an hour.

Q. After it went past you did it increase its speed?

A. No, sir; reduced.

Q. How far past you did it get when it started reducing its speed?

A. What is that?

Q. How far by you—withdrawn.

Q. Where was the last car, the ninth car with respect to Switch 18 when you say *you* they started reducing the speed?

A. The last car at 18 switch?

Q. No, you were standing at 18?

A. Yes.

Q. You say as the front went past you it was going six to eight miles an hour, right?

A. Yes.

Q. How many car lengths went by you before they started reducing?

A. They were slowing up all of the time.

Q. In other words, they had been going faster before they got to you?

A. Yes, sir, and they was slowing down.

Q. Did you see how fast they were coming when they came down off of the hump?

A. Didn't come any faster off of the hump.

Q. When did they start slowing down?

A. They didn't leave them go any faster after they come over the hump.

Q. Didn't you tell me they were slowing down all of the time?

A. When they got down there, yes.

[fol. 134] Q. And when they got to you they were going six to eight?

A. Yes, when the head end got to me, and hind end got to me they wasn't going that speed.

Q. And when the hind end went past you, tell us how fast it was going.

A. How fast was the hind end going?

Q. Yes,

A. They cut down a mile an hour slower.

Q. To what?

A. A couple of hours slower than it was at the head end.

Q. So that when the rear end got to 18, you say that the rear end was going how fast?

A. The rear end wasn't going over six miles an hour if it was going that fast when it went by me.

Q. What did you say just a minute ago, they were, not going over two miles an hour?

A. I didn't say that, I said they reduced two miles an hour on the speed.

Q. And they were going six?

A. Yes.

Q. Just what were the three brakemen on those cars doing as the cars went by you?

A. What were they doing?

Q. Yes.

A. They had the brakes on riding the cars.

Q. Were they pulling the brakes?

A. Yes.

Q. Did they have any brake-sticks in their hands?

A. Yes.

Q. Were the brake-sticks in the wheels?

A. They were waiting for the head man to signal.

Q. Were the brake-sticks in the wheels?

A. Yes.

[fol. 135] Q. These sticks are how long?

A. About two foot.

Q. They are like a baseball bat?

A. Yes.

Q. And they have those in the wheel so that they can pull hard?

A. Yes.

Q. Did all three of them have brake-sticks?

A. Yes.

Q. Did they appear to be pulling on them?

A. Didn't pull on them.

Q. How do they tighten up the brakes?

A. Push on them.

Q. After Mr. Stout let go his brake and started up to this other car where there was a brake, did the cars go any faster?

A. No, sir.

Q. Now, during the time that Mr. Stout was walking up the head car did Mr. Reeves or Mr. Allen walk a little bit, too?

A. No, sir.

Q. They stayed right on their brakes?

A. Yes, sir.

Q. Pushing right on them?

A. No, sir; wasn't pushing, they had it on.

Q. They went down there six miles an hour, the rear end, with the brakes right on tight?

A. Yes, sir; had the brakes on.

Q. Were all three brakes right tight?

A. I couldn't tell how tight they were, I know they had the cut under control, but I don't know how tight it was.

Q. They got them under control as you say, and when they get them under control and have a good long way to go, don't they ease up on the brake a little bit to go on down?

A. Your head man might, but the other two, the head man [fol. 136] might signal the other two, to release, and the head man hold his.

Q. So that when they get it, as you say, under control as they have it, and then they have got quite a ways to go down in this yard, the head brakeman gives them a signal and they ease off and pick up speed again?

A. Let them drift down, and if he wants to go up he will give the signal when he wants them put back on again.

Q. Did you see Stout giving any signal to ease up?

A. No, sir.

Q. Now, Mr. Chamberlain's cars, you say went down there out of sight?

A. Yes, sir.

Q. How many feet from the switch leading into 14, how far down did you see those cars?

A. Whose cars?

Q. Mr. Chamberlain's?

A. How far did they go?

Q. Yes.

A. They went all of the way down to the head end of the track.

Q. Right to the head end?

A. No, down to the other cars down there.

Q. They went down and coupled right up to the other cars, didn't they?

A. Yes, sir.

Q. And the purpose of going down there is to have them coupled right up to the other cars, isn't it?

A. Yes, sir.

Q. And if the work is being done right, when they get down there they will couple up to the cars on the track, if they have got the cars under control?

A. Yes, sir.

Q. You know those cars are about 40 feet to the car length?

A. Yes, sir; on an average.

[fol. 137] Q. You say when they went in here, the rear end of the draught was about six car lengths east of the switch, right?

A. Where?

Q. East of the switch leading in?

Mr. Allen: I object to the form of the question.

Q. Did you go down to see where the cars were after the accident?

A. After the accident, yes.

Q. And when you went in after the accident the rear end of the nine-car draught was how far east of the switch marked 7?

A. It was six car lengths.

Q. Will you mark there six car lengths where the rear end of the draught was when they stopped?

A. On a blueprint I don't know how far six cars is. It might have been around here somewhere.

Q. Will you mark there the letters R. E.?

A. That is six car lengths, I don't know much about blueprints.

Q. About how far was the head end of this nine cars from the rear end of Mr. Chamberlain's draft, if you know?

A. Pretty near a car length away.

Q. One car length away?

A. Yes, sir.

Q. So that you would have nine cars, and then one car length in between, and then two more cars, right?

A. I ain't got you right.

Q. Were there two cars to Mr. Chamberlain's cut that he rode in?

A. Yes.

Q. Were they coupled up to the other cars on the [fol. 138] track?

A. They was coupled up; yes, sir.

Mr. Allen: Coupled to which cars?

Mr. Sansone: To the ones he said went down first.

The Witness: Yes, sir.

Q. Do you know how close to the end of the track the other cars were?

A. No, I don't know how close to the east end of the track they was. They wasn't all of the way down.

Q. Could you see the east end of the track from where you were?

A. No.

Q. Was the head end of those cars right close to the east end of the track?

A. They were down pretty well, but I don't know how close they was to the end of the track.

Q. Could you estimate how many car lengths there was between the cars and the end of the track?

A. No, not down there.

Q. How close did they usually put them when they started making up that classification of cars on the track?

Mr. Allen: I object to what they usually did.

The Court: Sustained, exception allowed.

Q. You say you can't tell how far they were from the east end of the track?

A. No. sir.

Q. Were they near the east end of the track?

A. Down pretty close to the end there, I don't know how close.

[fol. 139] Q. When you say pretty close just what have you got in mind?

A. Two or three car lengths, five car lengths.

Q. That is your best judgment, right?

A. Yes, sir.

Q. That track can hold 40 cars, can't it?

A. I can't tell you.

Q. 40 cars and 40 feet to the car-length, that is 1600 feet; your understanding is that track can hold about 40 cars?

A. It might hold 40 cars.

Q. You say the front end of this nine cars was a car length away from the rear end of Mr. Chamberlain's draught?

A. Yes, sir.

Q. Where was Mr. Chamberlain when you saw him with respect to the rear end of those six cars.

A. Those nine cars?

Q. I should say nine cars.

A. Six or eight feet.

Q. Right in the middle of Track 14?

A. Yes, sir.

Q. You say when Chamberlain's cars went by you, you were listening for a crash, right?

A. Yes, sir.

Q. But you didn't hear any, did you?

A. No, sir.

Q. So that indicated to you that they were under control, didn't it?

Mr. Allen: I object to that question.

The Court: Sustained, exception.

Q. Anyway, you didn't hear any crash?

[fol. 140] Mr. Allen: I object to that, he has already answered it.

The Court: That is true.

Q. Now those cars that went in on 20 after Chamberlain's cars went in on 14, did you have to line up any switch for the cars on 20?

A. I had that lined up.

Q. Before?

A. Yes, sir.

Q. After they went in on 20 did you have to throw the switch that would let those nine cars go down?

A. No, sir.

Q. Well, now, let's see, what switch let the cars in on 20?

A. The divider.

Q. What is that?

A. The dividing switch.

Q. Who had charge of that?

A. Another switchman.

Q. So you didn't have to go back there when they went in on 14?

A. No, sir.

Q. What cuts, if any, were immediately after the nine?

A. I think there was a cut went down 18 after the 9.

Q. Did you have to throw a switch for them?

A. I had to throw 18.

Q. In other words, just as soon as that draught of nine went by, you had to go back and throw the 18 switch?

A. Yes, sir.

Q. So that just as soon as the rear end of the nine cars got over 18 switch you had to walk over and throw it?

A. Yes, sir.

Q. As you were doing that, did you observe this cut of cars going down, the speed of it?

A. As they were going down, yes.

Q. As soon as the rear end of those nine cars went by you, you went over to 18, and you had your back to those [fol. 141] nine cars, didn't you?

A. Yes, sir.

Q. Just when did you see this brakeman going from the second car to the first one?

A. After he got by me he started to walk over his train ahead.

Q. Did he take his brakestick with him?

A. Sure.

Q. That is what he needed if he wanted to put more brakes on, didn't he?

A. Yes.

Redirect examination.

By Mr. Allen:

Q. Mr. Edinger, how many switchmen did you have down there or around these tracks before the movement commenced?

A. There is generally three of us.

Q. You were at 18?

A. Yes, and it takes two men to tend to the dividers and one man runs the ladders.

Q. What were you doing?

A. I run the ladders.

Q. And the dividing switch——

A. (Interposing.) One at 28—one at 19, and one divides from 7 to 13.

Q. Just come down here a minute. The hump is marked here No. 2 hump?

A. Yes, sir.

Q. Where is the first space divided east of the hump?

A. Right here, it runs from 7 to 12 (indicating).

Q. Is there a man stationed there?

A. Yes, sir; it takes one man there all of the time.

[fol. 142] Q. Where is the other dividing switch?

A. One right here dividing 24 to 28 (indicating).

Q. There is a man stationed there?

A. Yes, sir.

Q. And then you were stationed here at No. 18, is that right?

A. This man here has got this 19 divider to attend to. He tends these dividers, and I run the ladders.

Q. And the switches on our ladders, are they set up before you are in your position here at 18?

A. Yes, we set them up before the train gets on the hump, because you know one track on this ladder the cars are going.

Q. You know what tracks on this ladder the cars are going that are going to be moved over the hump?

A. Yes, sir.

Q. And from the time you took up your position at 18 until your attention was called to this accident, did you go away from that position?

A. No, sir.

Q. The only thing you did was to throw this switch at 18 for this draught that followed the nine-car draught?

A. Yes, sir.

Q. Now the other switchmen on the other dividing switches, they also know how the draughts are coming down and the order in which they are coming?

A. Yes, sir.

Q. And that is all arranged between the switchmen and the conductor and the car cutter, before the movement is started?

A. Yes, sir.

Q. Now, after your attention was called to the accident you went down to the point where Mr. Chamberlain was?

A. Yes, sir.

Q. Did you go down to the east end of the [fol. 143] track?

A. Not right then; no, sir.

Q. Your estimate of the distance you gave Mr. Sansone was made from what, from where you stood at the place where Mr. Chamberlain was?

A. Yes, sir.

(Adjourned until Tuesday, January 5, 1932, at 10:30 A. M.)

New York, N. Y., January 5, 1932—
10:30 o'clock a. m.

Silas T. Roberts, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Allen:

Q. Mr. Roberts, you are employed by the Pennsylvania Railroad Company?

A. Yes, sir.

Q. How long have you been so employed?

A. 20 years the 21st day of December.

Q. As what are you employed?

A. As a conductor at the present time.

Q. In November, 1929, what were you working at?

A. A brakeman.

Q. In what yard?

A. West Morrisville, Pennsylvania.

Q. Did you know the deceased, Mr. Chamberlain?

A. I did.

Q. About how long prior to November 3, 1929, had he been working for the railroad, approximately?

A. Why, if I remember right, I think it was October 16th [fol. 144] he was employed.

Q. After his employment did you have anything to do with his instructions as a brakeman.

A. I did.

Q. Will you state what you did, how you instructed him in his duties as a brakeman?

A. I instructed him as a brakeman.

Q. How did you do it?

A. How to apply brakes, release brakes, how to ride cars, where to stand, where to hold on to, and always have a hold, and the general duties of a brakeman.

Q. For how many days did you instruct him?

A. Three days, the best I remember.

Q. And in that work were you with him when he worked on the trains and saw how he worked?

A. For those three days, yes.

Q. Now, were you engaged with the others in classifying cars at the time of Mr. Chamberlain's accident?

A. Yes, sir.

Q. After the classification movement began had you ridden some cars down into the yard yourself?

A. I had rode some cars down, yes.

Q. Had you come back up towards the hump?

A. Yes.

Q. Did you see Chamberlain after you had returned toward the hump?

A. I seen him going off with two cars as I was returning back to the hump.

Q. And about where were you at the time?

A. About in front of the office door.

Q. The yardmaster's office door?

A. Yes.

Q. Would you come down to this diagram, Plaintiff's Exhibit 1 and indicate approximately where you were?

[fol. 145] A. It would be about here (indicating).

Q. At this point?

A. Yes.

Mr. Sansone: Where I will put an arrow and mark it "S. T. R.", the initials of the witness.

Q. When you were at that point which has been marked on Plaintiff's Exhibit 1, S. T. R., where did you see Chamberlain?

A. He was just passing from off of the hump.

Q. How many cars did he have?

A. Two.

Q. What part of the draught was he on?

A. He was riding the west end of the rear car, the second car.

Q. Did you observe the speed of those cars?

A. That I wouldn't like to say.

Q. Did you notice whether they were going slow or fast?

A. Yes.

Q. What did you do or say, if anything?

A. I hollered to him to take them up.

Q. You hollered to him to take them up for what reason?

A. Why, because they were going too fast.

Q. When you hollered to him to take them up, what, if anything, did you see him do?

A. He immediately went over the cars.

Q. You mean over the top of the cars?

A. Yes.

Q. Was that—what kind of cars were they?

A. Gondolas, G. R. A.'s.

Q. Loaded?

A. With gravel or sand, I won't say.

Q. They were loaded?

A. Yes, but I don't recall what they were loaded [fol. 146] with.

The Court: Where were you when you made that remark?

The Witness: Standing on the ground on the ladder right in front of what we call the yardmaster's office door.

The Court: How far was that from Track 18?

The Witness: I might say that would be approximately four car lengths.

By the Court:

Q. Wasn't it track 18?

Mr. Allen: Track 14.

The Court: No, the other witnesses, I understood, hollered to him to the same effect, and he was at Track 18.

Mr. Allen: He was at the switch at Track 18, that was Mr. Edinger.

The Court: How far were you from Mr. Edinger?

The Witness: Approximately four cars.

The Court: I wanted to get in my mind how that was, because Edinger testified practically the same thing.

Q. You were on the north side of the tracks?

A. Yes.

Q. Edinger was on the south side?

A. I won't say I don't know where Edinger was.

Q. You know where the switch was leading to 18?

A. The switch was on the north side.

[fol. 147] Q. About how far from the cars Chamberlain was riding were you standing when you called to him?

A. About as far as here to the rail I judge.

Q. From where you are sitting to this rail?

A. Yes, sir.

The Court: There is something I can't quite understand, you were between the hump and Edinger, weren't you?

The Witness: Yes, sir.

The Court: I can't understand how this witness called to the decedent and he went to the brake, and then four car lengths further on Edinger called to him and he again went to the brake. This witness testified that standing in front of the house he hollered to him to the effect that his car was going too fast and that the decedent then rushed to the brake, and here four car lengths away Edinger makes the same call and he again rushes to the brake.

The Witness: May I state——

Mr. Allen: You tell just what you know.

The Witness: Your Honor, when I called to him he was standing at the brake which was on the rear platform or west end of the two cars. When I called to him to go get them he immediately got up on top of the cars and started for the brakewheel which was on the east end of the first [fol. 148] car and when he was going over that he must have passed Edinger, and then is when Edinger hollered, because he was going toward the brake on the east end.

Q. These cars were moving fast at the time you called?

A. They were moving too fast for a new man, which I thought.

Q. It took a very short time to go four car lengths at the speed he was going, is that right?

A. Yes, sir.

Q. Did you observe him after that?

A. We watched until he got down in on the track.

Mr. Sansone: He says, "We," and I would like to know who he has reference to.

The Witness: I will say I, then. I watched the man on the draught until he got down in on 14 track.

Q. When you say down in on 14 track, what do you mean?

A. When the draught went in on 14 track off of the ladder. He was getting down to the brake on the east end of the first car after he got in a little ways on 14, and there was somebody walked across the yard, which we thought was him, or I thought was him.

Mr. Sansone: I move to strike out what he thought.

The Court: I will let him testify and tell his story in his own way.

The Witness: I thought it was him, that he got off of [fol. 149] the draught and walked away, which we do when cars are getting away from us.

Q. Then what did you do?

A. I went back to the hump and got a draught of cars.

Q. After Chamberlain's draught passed do you know whether any other cars went down on the same track?

A. Yes, there was a nine car draught.

Q. Where was that when Chamberlain's cars passed you?

A. That was on the hump yet.

Q. Between the nine-car draught and Chamberlain's draught, do you recall whether any other draught went over to 18 or 20 track driven by Ashmore?

A. I do not.

Q. At the time you saw Chamberlain's draught in on 14 track, had the nine-car draught yet left the hump?

A. That I couldn't say.

Q. Where was the nine-car draught when you got back toward the hump?

A. When I got back towards the hump?

Q. Yes?

A. Really I couldn't say that exactly where it was.

Q. What draught did you get on?

A. I got on a three-car draught.

Q. Was that the next one behind the nine, or was there one intervening?

A. Yes.

Q. There was an intervening draught?

A. Yes.

Q. Where was your three-car draught going to?

A. It followed the single car draught that went off after the nine-car draught.

Q. What track was your three-car draught going to?

[fol. 150] A. Fourteen.

Q. When you saw Chamberlain's cars in on 14, was there any other cars going in after those cars on 14 at that time?

A. Not at that time, no.

Q. When you got on the three-car draught and rode that down over the hump, just tell us what you observed?

A. I was going down the ladder——

Mr. Sansone (interposing): May I have this fixed as to the time, how long after the two cars Mr. Chamberlain was on, went down?

The Witness: I won't say the time, because I don't know.

Mr. Sansone: I think we ought to have it fixed.

The Court: He says — doesn't know.

Q. Do you know whether there was any draught between Chamberlain's and the nine-car draught?

A. That I couldn't say.

Q. If all of the cars—naturally there would be, they would have all went on Track 14 together.

Mr. Sansone: I move to strike out what naturally would be.

The Court: All right, strike it.

Q. According to the practice of the yard if there are two cars consigned to one track and are following immediately behind nine or four cars for the same track, would [fol. 151] they all be ridden together?

A. They would all be ridden together, yes.

Q. Now, there was a draught between the nine-car draught and your draught of three cars?

A. Yes.

Q. A draught of one car?

A. One car.

Q. Do you know what track that was going to?

A. No, I do not.

Q. And your three were also going into Track 14?

A. Going down 14.

Q. Now will you state what you observed as you went down 14 track?

A. As I entered 14 track the brakeman, Mr. Jetter hollered to stop the draught, there was a man laying right ahead of me. I stopped my draught of cars I judge approximately five feet from him.

Q. That man was lying between the rails of what?

A. Lying at an agle of 45 between two rails.

Q. The rails of track 14?

A. Yes, the rails of track 14.

Q. How far ahead of him was the rear end of the next cars to the eastward, would you say?

A. I would say approximately about the same distance I was away from it.

Q. Was that the nine-car draught?

A. That was the nine-car draught.

Mr. Sansone: How many feet?

The Witness: We will say about five or six feet.

Q. Now, did you observe what was ahead of the nine-car draught?

[fol. 152] A. There was an opening ahead of the nine-car draught.

Q. Could you see cars further east on the track?

A. Yes.

Q. About how far east of the head end of the nine-car draught were those cars?

A. I won't say.

Q. But there was an opening space there?

A. Yes, here was an open space there.

Q. You didn't go down to see?

A. No, I didn't go down to see.

Q. Now, were all of the cars in on track 14 clear of the switch?

A. Yes.

Q. What then did you do?

A. I immediately got down and helped lift the man out of the track.

Q. What was done with Mr. Chamberlain then?

A. They got a stretcher, put him on it and put him on the gasoline wagon and took him up.

Q. Up to the hump?

A. Took him up to the hump and put him in the cabin car and took him to the hospital.

Cross-examination.

By Mr. Sansone:

Q. Now, Mr. Roberts, you say that Mr. Chamberlain came to work on October 16th?

A. I think that is what it was.

Q. Just how do you recall that date?

A. What is that?

Q. Just how do you recall that date?

A. How do I recall that date?

[fol. 153] Q. Yes.

A. Through the statement I gave when I was giving a statement, the yardmaster told me he was employed on October 16th, I am pretty near sure that is the date.

Q. So when you say you started instructing him on the 16th of October, you are telling something that somebody else told you, right?

A. Yes.

Q. Now, you say that for three days you instructed him as to how to ride cars down, is that right?

A. Yes, sir.

Q. Did you ride down with him on those three days?

A. Yes, sir.

Q. How many times would you say during those three days you rode right down on the cars with him?

A. How many times, I wouldn't say.

Q. Did you ride during those three days every trip that he made down?

A. Yes, sir.

Q. He would apply the brakes during those three days?

A. He would apply them under my instructions.

Q. You would both stand on the brake step?

A. How is that?

Q. You would both stand on the brake step?

A. No, sir.

Q. Who would stand on the brake step?

A. He would.

Q. Where would you be?

A. I would be on the top of the car or on the end sill, depending on the kind of car.

Q. Would you estimate how many trips you made with him on the 16th, the first day?

A. No, I would not.

[fol. 154] Q. Would you say a dozen?

A. I wouldn't say.

Q. Were there five?

A. I couldn't tell you.

Q. Were there more than five?

A. I couldn't say that even.

Q. Do you mean to say that going out especially to instruct this man the first day that you go out, you can't give us any idea whether you went on there three times or twenty?

A. I cannot.

Q. Are you sure you went down at all?

A. I wouldn't even swear to that, there are days we don't ride hardly any and days we don't ride none at all, if there happens to be a wreck.

Q. If you don't know whether you rode one car or not on the 16th, how do you tell us that you instructed him on the 16th?

A. I was to tutor him the days he was there.

Q. Did you do any tutoring the first day?

A. Yes, I did. I did the first day but I wouldn't say how many cuts we rode.

Q. Then you were mistaken when you said you might not have ridden any?

A. We might not at that.

Q. You still say you don't know whether you rode any, is that right?

A. Yes, I know I rode cars but, I don't know how many.

Q. Did you ride down as many as three times?

A. I wouldn't say.

Q. Did you ride more than once?

The Court: He had already testified that he can not tell that.

[fol. 155] Q. Let's take the second day, how many times would you say you rode down?

A. I won't say how many times I rode any day.

Q. Did you ride more than once the second day?

The Court: He says he won't testify as to how many times he rode with him any day or whether he rode on any particular day, but during the three days that he tutored him. During those three days that you were tutoring did you have many or few trips?

The Witness: Along about that time we were pretty busy, we had quite a few trips, and we were going I guess pretty near all day.

Q. You were pretty busy and you were pushing cars down there pretty fast?

A. How is that?

Q. You were pretty busy and you were pushing cars down there pretty fast?

A. Not faster than usual. They won't go so fast, brother.

Q. Just kept riding them down?

A. Riding them down and going back.

Q. Now, did you instruct him as to how he should go into the track?

A. As to how he should go into the track?

Q. Yes.

A. Yes.

Q. Did you instruct him that his job was to ride those cars down and regulate the speed in such a way so that they would couple to the cars that are already on the track, right?

A. Yes.

[fol. 156] Q. And did you instruct him to kind of look out because there might be a man on the car that had ridden in before and when he came together with those cars to come together as gently as possible, so as not to injure property or to injure a man?

A. Yes.

Q. And the usual way that the work should be done is to have the cars come together just fast enough to couple?

A. That's it.

Q. And there is a grade all of the way down which facilitates the movement of the cars?

A. Not all of the way.

Q. Isn't there a down track on 14, a slight grade all of the way down?

A. That I couldn't say, whether there is or not. After you get in on 14 I think it flattens out. There might be a very slight grade, but if you stop a car there she will stay.

Q. Don't you know all of the way down 14 there is a point seventy-nine grade all of the way from the west end to the east end?

A. Is there?

Q. I am asking you if you know that.

A. I don't know that there is that much grade there.

Q. During these days that you instructed him how many cars did he have to control?

A. That would vary.

Q. What is the most he had to control?

A. Six cars.

Q. Alone?

A. With me with him.

Q. So that during some of the trip you had more than enough for one man, and you were on one end and he was on the other?

A. Oh, no, I didn't say that.

[fol. 157] Q. Let's see, when you had *h*ix cars how many men were riding down?

A. That all depended on whether I thought I could handle them or whether I couldn't.

Q. Did you during those three days ride down six cars with him?

A. Yes.

Q. And during that time you stayed right at the point where he was, instructing him?

A. Right with him, yes.

Q. And you just had one brakeman?

A. How is that?

Q. I say, there was just one man applying brakes on six cars when you were instructing him?

A. I don't know whether they were loaded or empty, they happened to be box cars—I happen to recall this one cut.

Q. Were they loaded?

A. I don't know, I couldn't see inside.

Q. Isn't it important to know whether they are loaded or empty so that you would know how much braking you would want on the way down?

A. That would be judged when you started off of the hump, you apply your brake when you first leave the hump.

Q. In other words, you start down the hump applying your brake, is that right?

A. Yes.

Q. Then after you start going down, if you can't control them and they go too fast, then you decide you need more brakes?

A. Then I decide to get off if I can't stop them.

Q. Were you instructing him to get off?

A. I would, yes, if I seen we couldn't stop the draught.

[fol. 158] Q. You were the instructor there?

A. Yes.

Q. Rather than find out from the conductor whether they were loaded or empty so that you might determine whether you needed more than one brakeman you would start down with one brakeman and then unload if it didn't hold, is that what you say?

A. Positively that; if I saw they were going to hit I would unload.

Q. You don't know whether they are going to hit when you are just leaving the hump, do you?

A. Not quite that quick, no.

Q. You don't know whether they are going to hit until you find out whether you have got time to get over the cars and get on enough brakes, is that it?

A. That's it.

Q. Have you seen them go down when the fellows had to unload?

A. Plenty of times I have did it myself.

Q. You were the instructor?

A. I was the instructor, yes.

Q. There is no usual speed that they go down there, sometimes they go down much faster than others?

A. Yes.

Q. Depending how they are running, and the tonnage?

A. Depending on how fast the man wants to ride them.

Q. If you were starting down with one brake and wanted to ride slow and the brake wouldn't hold, it wouldn't depend on how the man wants to ride them?

A. If we had more than one car, yes.

Q. You say it all depends on how fast the man wants to ride them?

A. Yes, sir, that is it.

Q. Then what is the occasion of the man unloading?

[fol. 159] A. He may not apply the brake.

Q. If they don't go any faster than the man wants to ride them, why should there ever be a time when the man wants to unload?

A. If they don't run faster than the man wants to ride them?

Q. Yes?

A. He don't want them to run fast when he wants to couple.

Q. What is there about it that requires a man to unload sometimes when he is going down?

A. What is there about it?

Q. Yes.

A. Why he must judge his distance.

Q. Did you ever unload?

A. Yes.

The Court: He has answered that.

Q. How many times?

A. That I won't say because I can't recall how many times.

The Court: Let's get on to the question in the case.

Q. You say some time before the accident you rode some cars down where, on what track?

A. Before the draught on 14 I don't recall just what track I did go on.

Q. You were coming back up the hump?

A. Yes.

Q. You had ridden cars down just before the accident?

A. Yes.

Q. What track had you gone in on?

A. I couldn't tell you, I don't recall.

Q. Do you remember what switch you went over?

A. No, I don't.

[fol. 160] Q. How far down into the yard did you go?

A. I don't recall that, either.

Q. Can you give us any idea how far east of the office you went?

A. No.

Q. How many cars did you take down?

A. I don't recall that either.

Q. How many minutes before you were standing there was it, that you started off of the hump to go down?

A. I couldn't say that, either.

Q. Was it more than two minutes?

A. I can't tell you.

Q. How fast did you go when you were going in there on the trip before you saw Mr. Chamberlain?

A. How fast was I going?

Q. Yes.

A. I was going very slow or I wouldn't have stopped clear of him.

Q. I am talking about the draught before Chamberlain's.

A. That I don't know. I told you that I didn't recall that, and I don't recall where I went with the cut before.

Q. Wherever you went, how did you get back to the shanty, did you walk back?

A. I sure did.

Q. Do all of the men walk back up there?

A. No, sir.

Q. How do they get back when they ride the cars away down at the east end of the yard?

A. Sometimes they come back on the bus car, sometimes on the gasoline wagon.

Q. In other words, they have a gasoline wagon just for the purpose of hauling the men back up, is that right?

A. Yes.

Q. Had you ridden the gasoline wagon back up any time that day before the accident?

[fol. 161] A. I don't recall whether I did or not.

Q. How far do you have to walk back to get to the shanty?

A. I don't know how far I went down.

Q. How far was the gasoline wagon then?

A. I just don't clearly remember that.

Q. Was it there that day?

A. Oh, yes.

Q. And that was there for the purpose of taking the men right back on top of the hump where they were going to start off again?

A. Yes, sir.

Q. As you walked up there, were you alone?

A. Yes, sir.

Q. Was there somebody with you up there?

A. Yes, indeed.

Q. Standing there?

A. Yes.

Q. Who was it?

A. McTomaney.

Q. Was he a car dropper?

A. Yes, sir; that day.

Q. Was he standing there when you got there, or did he walk up there with you?

A. I walked up there with him.

Q. Where did you meet him?

A. That I don't know.

Q. How far did you walk with McTomaney before you got to the shanty?

A. I don't know where I met him, either.

Q. Was it ten feet?

A. I won't say.

Q. You are serious now when you say you can't recall how far you walked with him before you got to the shanty?

A. That has been two years ago.

Q. I know, but you are telling us about everything else [fol. 162] that happened two years ago.

A. That is all right.

Q. All right for who?

A. I can't remember that part of it.

Q. You don't remember the others that I asked you?

A. You can't remember everything that happened that day.

Q. You are saying seriously that you can't say whether when you met McTomaney it was more than ten feet from that office?

Mr. Allen: I object to that, he has not said that.

The Court: I will let him cross examine.

The Witness: What is that?

Q. You say you walked up there with McTomaney but you can't tell whether you walked with him more than ten feet to get to the yardmaster's office?

A. No, I cannot.

Q. Where were you when you first saw McTomaney?

A. I don't know.

Q. McTomaney hadn't been down with you, had he, on the same draught?

A. No, sir; I don't think that he had. I am not sure of that, either.

Q. In other words, you are not sure now whether McTomaney had ridden down with you on that draught?

A. No.

The Court: He has already testified to that.

Q. How many cars did you have?

[fol. 163] A. I told you I didn't know.

Q. Was there anybody else there besides McTomaney?

A. Not that I remember—no, not any more, with me.

Q. You are not saying there wasn't anybody else around the office?

A. Oh, positively, there was somebody in the office, but not outside where I was. There is always somebody in the office.

Q. And there is pretty much always somebody right around the office?

A. Not necessarily, no.

Q. You say they are not there, don't you see them going in and out of the office for orders?

A. Sometimes you do and sometimes you do not. When there is something on the hump there is nothing for you to go to the office for.

Q. You had crews working on the other side?

A. Yes, and they went to the office on the other side.

Q. There is an office there they go to?

A. Not there, no.

Q. When you first saw Chamberlain, were you standing still or walking?

A. I was standing still—when I first saw him I was walking and he was coming off of the hump.

Q. He was on the rear end of the draught?

A. On the west end of the second car.

Q. And he was standing in the place you had instructed him to stand when you were instructing him?

A. Yes, sir.

Q. Did he have hold of the brakes?

A. Yes, sir.

[fol. 164] Q. Did he have the stick there?

A. Yes.

Q. Was it applied?

A. Yes, sir.

Q. Was he pushing on it?

A. He had it already on.

Q. Just how far from the top of the hump was it when you first saw him—did you see him ride off of the hump?

A. I seen him come off of the hump.

Q. Did he have the brake on as he came off of the hump?

A. Yes, just as the hind end of his rear car came over the hump he applied the brakes.

Q. And the brake was on entirely as it went by you?

A. As far — I know, yes, he was standing at the brake when he went by me.

Q. Was he pressing on the brake stick?

A. No.

Q. The brake was on, you saw that and heard it?

A. As far as I know, yes, judging from the way he stood.

Q. How is that?

A. Judging from the way he stood the brake was on and he was not applying it then.

Mr. Allen: How is that?

The Witness: I said judging from the way he stood the brake was on and he wasn't applying it then.

Q. Did you hear it grinding?

A. No, you don't hear all of them; some you do and some you don't.

Q. Anyway, as he was going past you, you say you don't know how fast he was going?

A. I wouldn't like to say, no; I am a poor judge of speed.

[fol. 165] Q. You have been riding cars how long?

A. Since December 21, 1911.

Q. You are the instructor to tell them how to operate them?

A. I instructed that boy, yes.

Q. Did you instruct any other boys?

A. Yes, sir.

Q. How many more?

A. I couldn't say that.

Q. Being the instructor——

A. (Interposing.) I was not the instructor at all.

Q. I know, but you were instructor at times?

A. At times, yes.

Q. When you called to him, just what did you say to him?

A. "Take them up".

Q. Are you sure you said "Take them up", or did you say "Go get them"?

A. Take them up.

Q. You say soon as you told him that he started up to go get them?

A. He started to climb up on top of the cars.

Q. That is, he left the brake where he was?

A. Yes.

Q. He couldn't put that on any tighter?

A. I don't think so, or he surely would have tried.

Q. Did he walk or run over these cars?

A. I just don't recall whether he walked or ran.

Q. Did he look like he was hurrying over when you told him to go get them?

A. Well, yes, he did.

Q. What?

A. I say he was hurrying over for the other brake. He hurried up on top of the car when I hollered to take them up.

Q. Did you see him get to the other brake?

[fol. 166] A. I seen him go down on the end sill.

Q. Where was the car when you saw him go down on the end sill?

A. Leading in on 14.

Q. Just leading in?

A. Yes, sir.

Q. Did you see him work on the brake?

A. No, I did not.

Q. Was that the last time you saw the cars when it was just going into 14?

A. No, we watched him going down 14.

Q. Did you see him as the cars were going down 14 track?

A. I thought I saw him get off of the cars.

Q. You thought you saw him, but you didn't see him get off, did you?

A. No.

Q. How far in on 14 did those cars go?

A. How far did they go?

Q. Yes.

A. I wouldn't like to say how far they went.

Q. Did they go all of the way down?

A. They went down to the hind end.

Mr. Allen: You mean the east end?

The Witness: Yes.

Q. Were there any cars ahead of those on 14 track?

A. Yes.

Q. How many?

A. I don't know.

Q. You are sure they went all of the way down to the east end of 14?

A. Yes.

Q. And did you finally see—as they went down there did they appear to be slowing down at all?

A. That, I don't know.

Q. Did you stand right there until they got all of the way down to the east end of 14?

A. Yes.

[fol. 167] Q. How long did it take?

A. That, I can't tell you.

Q. Did they couple up with the other cars?

A. Yes.

Q. Make a noise?

A. Not much, no, you could just see them stop and that was all.

Q. And you say that you rode down finally after the draught of nine cars went down—did you see this nine-car draught at all?

A. How is that?

Q. You didn't see the nine-car draught?

A. I don't recall the nine cars at all.

Q. You don't recall them at all?

A. Not going off, no.

Q. Finally, you say you rode down some cars in after the nine cars?

A. Yes.

Q. And you got some place down there, and you say you saw a body, is that right?

A. What is that?

Q. When you got down off 14, you say you saw the body?

A. I didn't say I saw the body. Just before I got to him I saw him.

Q. That is what I mean.

A. Yes.

Q. How far had you gone in on 14 when you saw him?

A. How is that?

Q. Had you gone into switch before you saw him?

A. Oh, yes.

Q. How far past the switch of 14 did you get before you saw him?

A. Well, I should judge six to eight car-lengths—that is six to eight car lengths from where his body lay to the switch.

Q. What I am asking now, you say you went in the switch before you saw him there?

[fol. 168] A. Yes.

Q. And how far past the switch did your cars get before you saw him?

A. I know what you mean, approximately from three to five car lengths, my hind end you mean?

Q. Yes. Your hind end, is that what you say?

A. Yes.

Q. What end were you riding?

A. I was riding the east end.

Q. That is the front end?

A. That is the front end.

Q. You had how many cars?

A. Three.

Q. And the rear end of your cars you say were how far past that switch?

A. Approximately three to five car lengths.

Q. And you had three, so that would bring the head end of your draught how far in?

A. Eight car lengths.

Q. How far away from you was Chamberlain when you saw him?

A. When I first saw him?

Q. Yes.

A. He wasn't very far, because I was pretty near stopped.

Q. Can you give us any idea how far he was?

A. I wouldn't like to say.

Q. You say when you saw him lying there you got off?

A. No, I didn't say I got off. After I stopped my draught I got off.

Q. Did the front of your draught go past Chamberlain?

A. No, sir.

Q. And you say your draught, the front of it, stopped how far from him?

A. Approximately eight car lengths——

Q. Now, what I want to know, the front or east end of your draught when it stopped, how far in front of that was Chamberlain?

[fol. 169] A. I should judge probably five feet or a little better, or probably less.

Q. And the rear end of the draught of nine cars was about five feet the other side?

A. We were just about the same distance, he lying about midway between the two.

Q. Was there anybody there when you got off?

A. Yes.

Q. Who was there when you got off?

A. Howard Allen unloaded about the same time.

Q. Did you see him unload?

A. Yes.

Q. And he unloaded from where?

A. From the hind end of the nine-car draught.

Q. Did you say how many cars there were right in front of you?

A. No, I did not.

Q. Do you know how many cars there were in front of you?

A. No. I know there was cars there, I know there was a big draught.

Q. Whether there was 9, 10 or 11, you don't know?

A. No, I don't, it didn't concern me.

Q. You didn't count the number of cars in ahead of you?

A. No, I didn't count them.

Q. Will you tell us about how far it was from the head end of those nine cars in there on 14 to the rear of those other cars?

A. No, I don't know.

Q. What is that?

A. I didn't tell you any distance between the rear end of those nine cars and the cars down on there.

Q. I am asking you, can you tell us?

A. No.

Q. Was there a distance?

A. There was an opening, I can say that.

Q. That is what I am asking you. Can you tell us how [fol. 170] much of an opening there was between the head end of those cars ahead of you and the cars at the east end of the yard?

A. The cars ahead of me, and the cars ahead of the east end of them, no, I can't tell you how much opening there was.

Q. Was there room there for one car?

A. I won't say.

Q. Was there room for one car?

A. I won't say.

Q. You know that track holds 40 cars?

A. I don't know that it holds 40 cars, I think the track check calls for only 34.

Q. Well, it is 1700 feet.

A. Is it?

Q. Yes.

A. Well, I don't know that even.

Q. You say that while you can tell us that the body of Chamberlain was just about half way between the front end of your draught and the rear end of the other draught ahead of it, you can't give us any idea whether they had room for one car or 20 east of this nine-car draught, can you?

Mr. Allen: I object to the question because it is argumentative.

The Witness: No.

Q. Now, in the usual operation there those nine cars would go right up and couple up to the cars ahead, wouldn't they?

Mr. Allen: I object to that.

The Court: Objection sustained, exception allowed.

Q. When you instructed Mr. Chamberlain while riding [fol. 171] cars down on the track, did you instruct him to so regulate his draught that they would couple up to the cars ahead of him on the track?

Mr. Allen: I object to that.

The Court: He has already testified that he did that.

Q. When you saw Chamberlain, just how far east of the switch was he lying?

Mr. Allen: I object to that; he has already answered it.

Mr. Sansone: I have not asked it in that form.

The Court: I don't recall the answer to that particular question, and he can answer.

Mr. Sansone: I have not asked that question.

Q. How far east of the switch leading into 14 was Chamberlain lying?

A. I wouldn't say any definite answer, but I should judge probably a little better than six or eight cars.

Redirect examination.

By Mr. Allen:

Q. This gas wagon, does it run on any particular track coming up?

A. No.

Q. Where does it start from on the east end, do you know?

A. That all depends; if the track is clear, he will go [fol. 172] clean to the east end, and if the track isn't clear, he will go down to the cars or in two or three car lengths of the cars.

Q. Sometimes the men use the gas car and sometimes they walk up?

A. Yes, if it is closer to walk up than to climb over five or six tracks, we walk up—whichever is easier.

Q. When you say climb over tracks, you mean tracks with cars on them?

A. That is what I mean.

Q. You made some reference to some other office, what did you mean by that?

A. That is the westbound office which is on the opposite side of the railroad altogether.

Q. So that the work that is done on tracks 1 to 7, what office do they get instructions from?

A. From where?

Q. 1 to 6 tracks?

A. That is called the eastbound side.

Q. As you were coming down in on No. 14 track did you hear anyone hollering—I believe you mentioned someone's name.

A. Brakeman Jetter.

Q. He hollered?

A. He hollered for me to stop my draught.

Q. Was that before or about the same time you saw Chamberlain's body?

A. I would say about the same time, probably a little ahead.

Q. Where was Jetter at that time?

A. He was coming up out of the yard.

Q. He was on the ground?

A. Yes.

Q. In order for a man to go from the rear sill of a car, how does he proceed?

A. A gondola car is about as high as this desk from the [fol. 173] platform, and I usually just put one hand up and jump over, that is all.

Q. You get up on top of the load in the car?

A. Yes.

Q. And go across the top of the load, then down on the front sill, and then across to the sill of the other car and over that car and down on the front sill of it?

A. Yes, that's it. If we are going to the east end brake, we always put our club in the brakewheel for support to get down.

Q. That is, to get down from the front end down on the end sill?

A. Yes.

Q. About how long are these brake sticks or clubs?

A. About 26 inches.

John Ashmore, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Allen:

Q. Mr. Ashmore you are employed by the Pennsylvania Railroad Company?

A. Yes, sir.

Q. As what?

A. Brakeman.

Q. Are you now employed as a brakeman?

A. Yes, sir.

Q. In November, 1929, were you a brakeman in the West Morrisville yard?

A. Yes, sir.

Q. On the afternoon that Mr. Chamberlain sustained an injury, were you working as a car dropper?

A. Yes, sir.

Q. Was he working there that afternoon?

[fol. 174] A. Yes, sir.

Q. During this movement over the hump in which you were classifying cars down in the yard, did you see Chamberlain?

A. Yes, sir.

Q. Where did you see him last before the accident?

A. Before the accident Chamberlain and I was walking alongside to get our cut, together.

Q. I didn't get that, Mr. Ashmore.

A. We was walking alongside together to get our cut.

Q. By "cut" you mean the draught you ride down?

A. Yes, sir.

Q. Did you see him get on his cut?

A. Yes, sir; he was on the side next to the train, and he got on the west end of two gondolas.

Q. What cut did you have?

A. I had a four car cut for 20.

Q. Was that ahead of Chamberlain's cut, or to the rear of Chamberlain's cut?

A. Behind Chamberlain.

Q. You say he got on which car of his two-car draught?

A. The west end of the second car.

Q. Where did you get on your four-car cut?

A. If I remember right, it was about the center of the four cars; we always make a practice to get on where there are two brakes together, and that is where I got.

Q. If there are two brakes together, you get on there?

A. Yes, sir.

Q. Because you can operate the two brakes from one position?

A. Yes.

Q. That is the course of procedure over the hump?

A. Yes, sir.

[fol. 175] Q. They were going to Track 14, Chamberlain's cut?

A. I couldn't say where they were going, but they went over the hump ahead of me.

Q. Where was your draught going?

A. No. 20 track.

Q. That is south of No. 14?

A. Yes, sir.

Q. Did you know what draught was behind you?

A. I couldn't recall, because I wasn't back there to see the cars.

Q. After Chamberlain's draught went over the hump, did you observe him after that?

A. No, sir; I did not.

Q. Then your cut came over and you rode them down?

A. Down on 20 track.

Q. How far down on 20 track?

A. If I remember, it was not very far from the east end, probably five or six cars on the track.

Q. After you got down there, what did you do?

A. I went back to the hump.

Q. How did you go up, did you walk or did you go on the gas car?

A. I was walking up 20 track and I heard somebody holler, and I went through the cars.

Q. You were walking along 20 track?

A. Yes, sir.

Q. When you heard somebody holler, you came through the cars, what do you mean by that?

A. Naturally when you hear somebody holler you think something is wrong.

Q. Well, you came through, you mean you crossed over some cars on the tracks intervening between 20 and 14?

A. Yes, sir.

Q. When you got over there, what did you see?

[fol. 176] A. If I remember right I saw two or three fellows walking up toward the west end of 14 track, and when I got up there I saw Chamberlain.

Q. Was Chamberlain between the rails when you got there?

A. Between the rails; yes, sir.

Q. Do you recall any of the men you saw when you got here?

A. I don't remember the names, but I know there was three or four men around there.

Q. Did you assist in getting Chamberlain out?

A. No, sir.

Q. What did you do?

A. I proceeded up to the hump.

Q. Was work stopped for a while as Chamberlain was being removed?

A. All operations had stopped.

Cross-examination.

By Mr. Sansone:

Q. You say you got on the draught right in back of Mr. Chamberlain?

A. Yes, sir.

Q. About how far west of the point of the hump were you when you got on?

A. Well, we always walk back far enough to get ourselves time enough to try our brakes, and we were I should judge, five or six cars lengths west of the hump.

Q. West of the place where they drop them off?

A. Yes.

Q. You had how many cars?

A. Four cars.

Q. Loaded?

A. Yes, I think they were loaded.

Q. With what?

[fol. 177] A. I wouldn't say what they were loaded with.

Q. How many brakes did you have?

A. Four brakes on four cars, because I had two brakes together.

Q. In other words, you had a brake on the east end of one car and a brake on the west end of the other car?

A. Brake for brake, yes.

Q. When they started to push Mr. Chamberlain over, they kept that whole draught moving along?

A. Approximately two miles an hour they hump a cut.

Q. They keep moving, don't stop the train at all?

A. No, sir.

Q. It is a continuous movement, keeping them going right down?

A. Yes, until they run out of men, then they stop until the men come up.

Q. While the men are there, they don't stop?

A. No, sir.

Q. You have been riding cars there how long?

A. Nearly 17 years.

Q. Of course, you didn't see any part of the accident?

A. No, sir.

Q. Can you tell us how far into 20 you went, approximately?

A. I would not say to be exact, but I would judge five or six car lengths from the end of the track.

Q. You went five or six car lengths from the east end of the track? (Indicating.)

A. Yes, sir; that is 20 track here, and I come along about here (indicating).

Q. Were you the first draught in on 20?

A. That I wouldn't say.

Q. Will you just put "A. C.", representing Ashmore cut [fol. 178] at the point you have indicated?

A. I was five or six car lengths from here (indicating).

Q. All right, just mark that there.

A. (Witness marks on Plaintiff's Exhibit 1.)

Mr. Sansone: The "A. C." marked on this exhibit indicates the part of the Ashmore cut.

Q. You were walking all of the way back?

A. Yes, sir.

Q. Was the gasoline car there?

A. I don't know whether the gasoline was. When there is a lot of cars we figure we can get back just as easy by walking as by crawling over the cars and looking for the bus.

Q. You went right along down after Chamberlain?

A. Yes, sir.

Q. You saw him when he went off of the hump?

A. The last time I saw Mr. Chamberlain he was on the west end of his cars trying his brake.

Q. Did you see him when he went down?

A. I didn't notice.

Redirect examination.

By Mr. Allen:

Q. Do you recall how many brakes you actually used going down?

A. I only used one brake, and I had the other one right there handy in case I needed it.

[fol. 179] George J. Jetter, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Allen:

Q. Are you employed by the Pennsylvania Railroad Company, Mr. Jetter?

A. Yes, sir.

Q. As what?

A. As a brakeman.

Q. In November of 1929, were you working as a brakeman?

A. Working at West Morrisville yard as a brakeman.

Q. The West Morrisville yard?

A. Yes, sir.

Q. On this afternoon that Mr. Chamberlain was injured were you working in the West Morrisville yard?

A. Yes, sir.

Q. What kind of work were you doing?

A. Car dropping.

Q. Car dropper?

A. Yes, sir.

Q. When this movement of classifying cars over the hump started, did you have any cars to ride?

A. Seven cars.

Q. And for what track?

A. 14 track.

Q. What other brakemen, if any, were riding with you?

A. Geddes.

Q. Where did you get on the cars?

A. On the east side of the hump—west side of the hump, rather, before the cars got on the hump.

Q. What part of the draught of seven cars did you get on?

A. Between the first and second car.

Q. The leading car, the eastward car?

A. Yes, sir.

Q. Were they loaded cars?

A. Yes, sir.

[fol. 180] Q. What were they loaded with, do you remember?

A. Sand and gravel I don't know which was sand and which was gravel, but they were sand and gravel.

Q. They were gondola cars?

A. Yes, sir.

Q. Do you know where Mr. Geddes got on that draught?

A. No, I couldn't tell you just where he rode on it, but as a rule we always get near the hind end so that we can hold the hind end back.

Q. He was to the rear of you?

A. Yes, sir.

Q. When you went over the hump and proceeded down on No. 14 track, state what you did?

A. When we got on on our cars on the west side of the hump, we always try our brake to see that we have a brake that we can hold by, and we can tell by the feel of the brake whether she is holding or not. After we get over the hump, if we have more than two or three cars we wait until the first car gets over the hump, then put one brake on to steady them up so that they won't go too fast over the hump —and that is what I did. I had two brakes together between the first and second cars.

Q. That is the rear end of the first and the head end of the second?

A. Yes, sir. I got the first brake on and got the other ready if I had to put it on, but I didn't put it on right then. After we get down the track and have to put them on, we wind them up.

Q. You control the draft according to how far you have to go, is that right?

A. Yes, sir.

Q. How far in on 14 track did you go?

[fol. 181] A. Almost to the east end, I don't know whether the track was clear or not.

Q. About how many car lengths would you say from the east end?

A. I will say four.

Q. Before you came to a stop, did you notice anything happen?

A. No, sir,—yes, sir; I did, I felt a little jar.

Q. A little jar?

A. Yes, sir.

Q. That was not anything you hit ahead of you, was it?

A. No, not ahead.

Q. You felt a jar from the rear?

A. From the rear.

Q. After you felt that jar did you proceed along in the regular way?

A. Yes, sir.

Q. About how many car lengths did you move after you felt that jar, before you came to a stop about four lengths from the end of the track?

A. Two or three car lengths, not over that.

Q. When your draught came to a stop, what did you do then?

A. I anchored the cars.

Q. That is a new word, what does that mean?

A. Apply the brakes so that they won't move again.

Q. Why do you do that?

A. So that the next cars that come down won't move the cars out off of the track.

Q. In other words, the head cars that are stopped on the track are anchored so that they won't be pushed out further on the ladder on the other end?

A. Yes, sir.

Q. About how many brakes did you put on?

A. Four.

Q. You, yourself, put four on?

A. Yes, sir.

[fol. 182] Q. Was Geddes putting on brakes?

A. I don't know.

Q. Then what happened, or what did you notice?

A. I got off of the draught and walked back to where Joe was.

Q. That is Geddes?

A. Joe Geddes, and there was a brake club in the wheel and Joe took it over.

Q. How many cars did you have then?

A. Seven that we took down, nine altogether, with the two that we had hooked up against.

Q. When you came down off the grade you had seven cars that you had ridden down, and then two more?

A. Two more up against it.

Q. You say Joe said something about a brake stick?

A. Yes, sir.

Q. Where was that brake stick?

A. In the east end of the second car in the brake wheel of the second car, at the west end of the drag.

Q. It was at the head end of the drag that is, of the two cars, it was in the car next to yours?

A. Yes, sir; that is it.

Q. What did you do?

A. Joe took the brake club out, and naturally we started to look to see if anybody got hurt, fell down, or anything happened, and we looked up the track and seen a bunch of grass in the track—we didn't know what it was then, but it might have been whoever rode the cut, and we went up there and that is what it was, and then Joe went across the track.

Q. That is, across what track?

A. He went over towards 15 track; I don't know where he went.

[fol. 183] Q. What did you do?

A. I looked up the track and seen Chamberlain raise up.

Q. About how far from the end of the nine cars, that is, your seven, plus the two that had hooked on to it,—how far west from the rear of those nine cars did you see this man raise up from between the rails?

A. From the hind end of the cars to where I was standing?

Q. From the hind end of your cars, yes.

A. I will say Chamberlain was laying about 15 car lengths from where my hind end was.

Q. And this bunch of grass that you spoke of, about how far was that from the rear end of those nine cars, would you say?

A. About five car lengths.

Q. Had you proceeded further west than the bunch of grass before you saw this man rise up between the tracks?

A. Yes, sir, but not far.

Q. When you say rise up, what do you mean?

A. Just looked as if he raised up on his elbows; that is to say, he looked to me that way, but I was a ways from him you understand.

Q. You were about how many car lengths away?

A. I can't answer that.

Q. What did you do then?

A. I ran on up the track.

Q. Did you holler to Geddes?

A. Yes, I hollered to Joe, but I ran up the track and hollered to the other fellow that was bringing the nine-car cut down.

Q. When you saw this man rise up between the tracks, where was this nine-car draught?

[fol. 184] A. Looked to me as though the draught was ready to go over him.

Q. Could you tell about how far away it was, how many car lengths?

A. No, I couldn't estimate, because I was too far away; it looked to me as though the draught was ready to pass over him.

Q. Did you holler?

A. Yes, sir.

Q. Tell us what happened then?

A. The men on the draught stopped the cars as quick as they could.

Q. It moved how far before coming to a stop?

A. Nine cars lengths.

Q. When the head end of that nine car draught came to a stop, it was about how far from the rear end of your seven cars plus the two cars hooked on to your two?

A. I imagine about five car lengths opening there.

Q. When the nine-car draught stopped where were you?

A. Right opposite Chamberlain's body.

Q. That is at the rear end of the nine cars?

A. Yes, sir.

Q. What did you do then?

A. I hollered for the other fellows to stop.

Q. For who to stop?

A. Si. Roberts, who was coming down there, too.

Q. Did he come down there?

A. He came down but he stopped before he got to where we was.

Q. About how far from the rear end of the nine-car draught was Chamberlain's body when you got there?

A. It was not very far. I doubt if it was as far as here [fol. 185] to the railing there; that is better, it was just about that far, I imagine.

Mr. Allen: I suppose it will be conceded that is about nine feet?

Mr. Sansone: Yes.

Q. Roberts' cars on the west, how far did they come to a stop from the body?

A. Pretty near the same distance.

Q. How many men were on this draught of nine cars, do you remember?

A. I only saw two.

Q. Who were they?

A. Stout and Allen.

Q. Where did you see those two?

A. One on the head end and one on the hind end.

Q. After the draught stopped did you see any of those men there?

A. I saw Allen pick up Chamberlain.

Q. Did you see Roberts get off, too?

A. Yes, sir, Roberts got off, too, but I didn't see him go to the body, he was running and hollering for the bus then.

Q. That is this gasoline wagon?

A. Yes.

Q. Chamberlain was put in the gasoline wagon and taken up then and put in the cabin car?

A. Yes, took him up on the other side of the hump and loaded him in the cabin car and took him to the hospital.

Q. Now when you got to the rear of your seven cars plus the two that had hooked on to your draught and looked up the track to see if anyone was there on the track, had the nine-car draught ridden by Stout and Allen come into the track yet?

[fol. 186] A. ~~Yes~~ No, sir; the track looked clear to me.

Cross-examination.

By Mr. Sansone:

Q. Mr. Jetter, when you first saw this nine cars how far away from you were they?

A. When I first saw the nine cars?

Q. Yes, sir?

A. Well, now, I can't tell you how far, I will say about ten car lengths.

Q. And you were how far from your draught?

A. Sir.

Q. You were how far from your draught?

A. Then they were nowhere near our draught.

Q. Just where were you when you saw those cars?

A. I was about five or six cars lengths from my hind end.

Q. That is going west?

A. That is, I was west of my draught.

Q. Was your other brakeman—who was he, you say?

A. Geddes.

Q. Was he with you then?

A. He wasn't with me when I first seen the nine cars; he had left me and walked across the track.

Q. In what direction?

A. Well, I will say south, toward 15 track.

Q. You were both going back up to the hump?

A. We were not going for the hump, we were looking for what happened, where that fellow was that had the two cars.

Q. There was a brake stick, did you get that?

A. No, Joe got it.

Q. Now, when you saw those nine cars how fast were they coming?

A. Not very fast.

[fol. 187] Q. How fast would you say?

A. Well, I will say a normal rate of speed; I can't tell you how fast that is.

Q. How fast is that, what would you consider a normal rate of speed there?

A. When you are riding a car off of the hump you always ride it so you can stop as quick as you can.

Q. When you started down the hump how fast were you going?

A. Not much faster than you would walk.

Q. Was it four miles an hour when you started down?

A. About that fast?

Q. Did you continue at that same speed all the way down?

A. Yes, sir.

Q. Did you ease up on the brake a little bit when you slowed down to that?

A. No, I didn't have to with the brake I had on.

Q. In other words, the brake was on, and slowed it down so that it would be on all the way down?

A. Yes, sir.

Q. So there was nothing for you to do but put the brake on and leave it on?

A. Yes, sir; nine cars will push you down.

Q. Did it slow you down at the right place?

A. No, I had to put another on when I had to stop.

Q. That, you say, was five car lengths from the east end?

A. Four or five cars from the east end.

Q. Who was the first one you ever told this story to about seeing Mr. Chamberlain standing up?

Mr. Allen: I object to the question. He didn't say that [fol. 188] he stood up.

The Court: He said he raised up on his elbow.

The Witness: Who was the first one I ever told?

Q. Yes.

A. I couldn't tell that, I told it to everybody, I don't know who was the first one I ever told it to. I told it to Mrs. Chamberlain.

Q. When did you do that?

A. At her home right after, on my way home from work I stopped at her home and told her about it.

Q. You told her just the way you have told us here today?

A. Exactly the way I said it to her I told it here.

Q. That as you walked up the track you walked up west and saw him raise his head then you saw this nine cars coming down, and you yelled at them to stop, you told her just that?

A. Yes, sir.

Q. Who was there when you told her?

A. I don't know that.

Q. What?

A. I don't now who was in the room, I didn't know anyone, in fact, I didn't even know her.

Q. Was there anybody else there when you told her?

A. Just a young lady, I don't know who she was.

Q. Did you tell it to the claim agent?

A. In a statement; yes, sir.

Q. Is that Mr. Brown?

A. I don't know who he was.

Q. Did you tell it to anybody at the lawyer's office?

[fol. 189] A. Yes, sir.

Q. How many times did you tell it there?

A. Once or twice, I don't know.

Q. How many times were you at the lawyer's office?

A. I don't know that, two or three times.

Q. How?

A. Two or three days I was there.

Q. Who else was there when you went to the lawyer's office?

A. In the office with me?

Q. Yes?

A. There was two gentlemen there and they stayed there, Mr. O'Kelley, and the other gentleman.

Q. What other witnesses were there?

A. None.

Q. Were there any other witnesses in the office?

A. Not in the office where we was in.

Q. How many of them were outside?

A. There was lots of fellows outside, the whole crowd of us there.

Q. None of those other witnesses heard this when you were telling it?

A. Not to the lawyer; no, sir.

Q. In other words, you were all outside and would just go in one at a time, is that it?

A. That is the way we did it.

Q. None of the witnesses heard what you told the lawyer?

A. No.

Q. Did you tell any of the witnesses?

A. Yes, previous to telling the lawyers I told it.

Q. Which ones did you tell it to?

A. I told it to Joe Geddes.

Q. Who else besides Geddes?

A. I know Geddes was with me and I had told him.

Q. He was with you and you had to tell him?

[fol. 190] A. Yes, he didn't see it, I don't think he did.

Q. How long were you at the lawyer's office when you were telling this?

The Court: I don't think it is necessary to go into that. Necessarily a lawyer preparing a case for trial must talk to his witnesses.

The Witness: That is right, I was at the office.

Q. How long have you been working for the Railroad Company?

A. 20 years in December; I have been 19 years now.

Joseph B. Geddes, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Allen:

Q. Mr. Geddes, you are employed by the Pennsylvania Railroad Company?
A. Yes, sir.
Q. As what?
A. Brakeman.
Q. How long have you been employed there?
A. It will be 14 years in January.
Q. On November 3, 1929, were you working as a car dropper in the West Morrisville yard?
A. Yes, sir.
Q. Do you know Jetter, the last witness who was on the stand?
A. Yes, sir.
Q. Was he a car dropper also?
A. Yes, sir.
Q. Did you know the deceased, Mr. Chamberlain?
[fol. 191] A. For a week or two.
Q. On this afternoon you were classifying cars over the hump down into Yard A, is that right?
A. Yes, sir.
Q. Did you have any draughts to ride down there that afternoon?
A. Yes, sir.
Q. Who rode the draught with you?
A. Brakeman Jetter.
Q. The last witness?
A. Yes, sir.
Q. How many cars did you have in your draught?
A. To my knowledge, seven.
Q. And for what track?
A. Fourteen.
Q. Will you state what you did as you came down over the hump and went in on No. 14 track?
A. We rode the cut down there in the usual manner.
Q. Where were you riding, by the way?
A. Near the rear end.
Q. Do you know exactly which car you were on?

A. Well, my memory, between the second and third rear cars.

Q. Where was Jetter?

A. Near the head end.

Q. Now, when you say you rode it down on 14 as usual, just describe what you did, how you rode the cars?

A. Normally you ride down there and secure the draught at the east end of the track or near the east end.

Q. When you went down on Track 14, did you notice anything on your draught?

A. Yes, sir; two cars came against us.

Q. From the rear?

A. Yes, sir.

Q. Were you still moving at that time?

A. Slowly.

Q. After those two cars came against you, about how far [fol. 192] did the draught of seven, plus two move before you stopped?

A. I should judge four or five car lengths.

Q. When you came to a stop, about how far from the east end of that track would you say the head of your seven, plus two cars was?

A. I should judge five or six car lengths.

Q. Car lengths?

A. Yes, sir.

Q. What then did you do?

A. Secure the train, or anchored it, as we term it, so that they won't drift out.

Q. So that any cars coming against them would not force them out?

A. That is the idea.

Q. How did you secure the draught of seven plus two cars?

A. With hand brakes.

Q. How many did you put on, do you recall?

A. I think I put one on, I wouldn't say for sure, one or two.

Q. Now, when these two cars came against your seven cars, did you look around?

A. Yes, I looked back.

Q. Did you see anyone on the cars?

A. No.

Q. What did you do then after your draught of seven plus two was anchored?

A. When I looked around I saw a brake club in the wheel of the two cars.

Q. Which wheel?

A. The wheel on the head end of the head car.

Q. That would be the one up against the rear of your seven cars?

A. Yes, sir.

Q. You say in the brake wheel, what do you mean?

A. It was caught in the manner in which we use the club.

[fol. 193] Q. Or in the manner you put it in to use it as a hold to get down on the sill?

A. Yes.

Q. What did you do?

A. Jetter and I anchored the drag, and this club created a little suspicion.

Q. Suspicion of what?

A. Of something strange, to find a club without a man.

Q. There was no man on this draught?

A. Only the club. I looked back and Jetter did too, at the same time, and we saw a patch of grass which was brown and we started back to determine what this grass was, whether it was a man or not, and we got far enough back to determine what it was, and I crossed to 15 track and attempted to climb over to look to see where the bus wagon was, to return to the hump.

Q. At the time you got back to where this crop of brown grass was did you look down westward on 14 track?

A. I did, yes.

Q. Did you see any cars coming in there at that time, before you started over to 15 track?

A. Just at that time, I couldn't say whether there was or was not.

Q. Then you started over to 15 track to look for the bus wagon?

A. As I remember, 15 track was clear, and I walked across 15 track and attempted to climb over 16.

Q. Then what happened?

A. Jetter hollered, "There is a man up there," meaning on 14 track, and we started there.

Q. When Jetter hollered, did you look?

A. Yes.

Q. Did you see anyone up there?

[fol. 194] A. I could see an object, but I couldn't say it was a man at that time from the position he was in.

Q. Did you look then westward towards the switch at No. 14?

A. Yes.

Q. Were there any cars coming at that time?

A. Yes, at the time Jetter called me he saw the man, there was cars coming.

Q. Where were they?

A. As far as I could judge, they were half way between the end of the track and where Chamberlain's body lay.

Q. What did you do?

A. We started to run up, of course.

Q. Did you holler?

A. Jetter did, I couldn't say whether I did or not, but I remember hearing Jetter.

Q. What then happened?

A. The draught of nine cars passed over Chamberlain's body.

Q. When it came to a stop about how far to the rear of the draught was Chamberlain's body?

A. Chamberlain's body was about eight or ten, maybe five or six feet west of the nine-car draught that had stopped.

Q. About how far did that draught move after it passed Chamberlain's body, about its own length, about nine cars?

A. I don't understand the question.

Mr. Allen: I withdraw the question.

Q. Now about how many car lengths did it take to bring that draught to a stop?

A. Well, I couldn't tell where the man attempted to first stop the draught, because I was more interested in the man laying on the track.

[fol. 195] Q. About how far did they go?

A. That is a hard question, I was more interested in the man.

Q. Were they going slow or fast?

A. They couldn't have been going very fast or they wouldn't have stopped in such a short distance.

Q. In about what distance would you say they stopped?

A. They were just about eight, or seven feet over Chamberlain's body.

Q. When they did stop, the head end of that draught was about how far to the rear of the seven-car draught plus the two cars which you had anchored at the east end of the track?

A. I couldn't say just how far.

Q. Approximately, could you say how many car lengths?

A. In only my judgment, I would say six or seven cars. Now, that is judgment.

Q. When the draught actually stopped, the nine-car draught stopped, where were you?

A. When it stopped?

Q. Yes.

A. Standing right opposite Chamberlain's body out between 14 and 15 track.

Q. You had ran down that way towards Chamberlain's body?

A. Yes, sir.

Q. And the draught passed beyond as you were going down?

A. We were pretty close to Chamberlain's body at the time the head end got to it, and by the time a couple of cars passed over I remember looking through the wheels for Chamberlain.

Q. When the draught came to a stop did anyone get off of that draught?

A. Yes.

Q. Who was it?

A. Allen.

[fol. 196] Q. Did you see any other draught coming?

A. Yes.

Q. Whose draught was that?

A. Roberts got off of it, and I suppose it was his.

Q. Did you holler to him as he was coming down?

A. I think Jetter hollered, I wouldn't say whether I did or not.

Q. Did you see any other riders of this nine-car draught there?

A. Yes, Stout was on the head end.

Q. Did you see Reeves there?

A. No, I wouldn't say I saw him, I was looking under the wheels.

Q. What then, did you do?

A. Allen and I lifted Chamberlain from between the wheels out between 14 and 15—I mean out from between the rails of the track, rather.

Q. He was put on the bus and taken up to the hump?

A. Yes, sir; put on the stretcher, but I didn't help put him on the stretcher.

(Recess until 2:00 P. M.)

After Recess

2:00 P. M.

Joseph B. Geddes resumed.

Cross-examination.

By Mr. Sansone:

Q. Mr. Geddes, how long have you worked for the Pennsylvania Railroad?

A. About 14 years.

[fol. 197] Q. What part of that time have you been dropping cars down there?

A. I should say twelve years, or twelve and a half.

Q. This draught you rode down, you say were how many cars?

A. Six or seven.

Q. How close to the east end of the track did you put those cars?

A. I judge the head car was five or six cars from the end of the yard.

Q. Before your draught stopped you at no time saw Mr. Chamberlain?

A. Not before the draught stopped; no sir.

Q. He was riding the draught down behind you, you didn't see Mr. Chamberlain?

A. No, I didn't see it coming.

Q. You are not attempting to say that the cars that came in contact with yours were the cars ridden by Mr. Chamberlain, are you?

A. I couldn't say by sight.

Q. You didn't see him at any time before you saw him on the track?

A. I saw him that day, but not at the time of riding that cut.

Q. When you brought your cars to a stop just what did you do?

A. Secured the cars.

Q. Which car were you riding on?

A. As I remember it, between the second and third rear cars.

Q. And as you went down there, how many brakes were you operating?

A. There was two, where I stood.

Q. At the place where you stood, there was a brake, one on the head and one on the rear end of the two cars?

A. Yes, sir.

Q. As you went down there, how many did you use?

[fol. 198] A. It is always customary to take the slack out of the chain to use both if needed. I applied one brake slightly leaving the hump.

Q. So leaving the hump you applied just one brake slightly?

A. Yes, sir.

Q. And you hadn't touched the other?

A. I had taken the slack out of the chain as I told you.

Q. You had no braking power on it?

A. Very little.

Q. When you stopped and you secured them, did you tighten up on the brake that you had been using?

A. I naturally put one brake on, but I couldn't say whether I applied the other or not, it has been too long ago.

Q. That of course being the first draught in there, you make that more secure than you do the others that are going in?

A. Customarily our work, the first few cars down there are secured to hold the balance of the tracks.

Q. In a draft of that kind, how many brakes would you put on to secure it?

A. On any of those drags in that territory you use five or six or four, depends on how good you think the brake is.

Q. Now, Mr. Jetter, the other man, was on the draught ahead of you? A. The front portion of the draught.

A. The front portion of the draught.

Q. Will you tell us now whether you put just one brake on or whether you put another on?

A. Then I came to a stop?

Q. When you stopped did you put another brake on?

A. I tightened the brake up that I had been using, to remain as an anchor brake as we call it.

[fol. 199] Q. Then did you put another one on?

A. I am not positive, but I don't think so.

Q. Did you see whether the other brakeman put some on?

A. He was working on the brakes, but I couldn't tell you how many.

Q. Did he put one on the car he was on, then step over and put another on?

A. I wasn't there, but I know he was working on the brakes.

Q. All you can tell of your own knowledge is he put one on and you put one on?

A. I didn't see him put one on. I said he was working at the brakes.

Q. As to whether he put one on or more, you don't know?

A. I couldn't say that. I said he was working at the brakes.

Q. How long did he keep working at the brakes before he got off?

A. I couldn't determine that in time, just the regular time to secure the brakes.

Q. How long did he stay on that cut before he got off?

A. When he finished working on the brakes he got off.

Q. Give us an idea of how long it was before he got off?

A. When he got done working with the brakes.

Q. That is not what I asked you.

A. That is the way I understand it.

Q. I will ask you again, how long after the draught came to a stop was it before Mr. Jetter got off?

A. Well, just time enough to anchor the drag and get off.

Q. Did it take ten minutes?

A. No, it didn't take ten.

Q. Did it take five?

[fol. 200] A. I don't think it did, I didn't time it. It is a regular form of work, and he was doing it, and timing those things, we don't do that.

Q. How long after the draught stopped did you get off?

A. I tightened up on the brake I had and stepped to the ground.

Q. You got right off?

A. After I tightened up the brake.

Q. Did you stand there until Mr. Jetter got off?

A. I was standing there just a little while, I wouldn't say how long, when Jetter came up.

Q. Did you stand there waiting for him?

A. I was in that immediate vicinity, I wouldn't say I was in the same footprint.

Q. What I am asking, did you wait for him to come back up the hill?

A. To a certain extent I was waiting, but not long.

Q. Did you wait until he finished and got down to where you were?

A. I couldn't say I waited in that one place, I might have stepped around a little bit.

Q. After he finished and got down, did he come to where you were?

A. He came in that general direction, yes.

Q. Did he come near you?

A. Sure.

Q. How close did he get to you?

A. I didn't measure it.

Q. You say you started over towards Track 15?

A. Yes, sir.

Q. That would be south?

A. 15 is south of 14, yes.

Q. Did you cross 15?

A. I couldn't say. I did at one time, but just whether I [fol. 201] did then or not I couldn't say.

Q. Did Mr. Jetter cross 15 with you?

A. I couldn't say that.

Q. How far south of 15 did you go?

A. Well, not over a step or so, there was cars on 16 as I remember it.

Q. After Mr. Jetter got off you started to walk west?

A. Jetter and I, after the drag secured, started walking west. As we went west we knew this cut came down, you understand——

Q. As you started walking west were you south of 15?

A. South of 15?

Q. Yes?

A. I couldn't say, we were in between 14 and 15. Just the path I took I wouldn't attempt to say.

Q. You say after you got off of your drag you crossed 15 going in a southerly direction?

A. I didn't say that.

The Court: I don't think that is his statement. He says sometime, he doesn't know just when, he crossed 15, but that he didn't know whether he did it then or later.

Mr. Sansone: All right, let's have it this way.

Q. When you got off of the draught of course, you were between 14 and 15?

A. Yes, between 14 and 15.

Q. How much of a space is there between 14 and 15?

A. Well, the tracks are set by the engineer, and I couldn't tell that, just measuring, just glancing, there is room enough for cars on each side and for a man to walk in between.

[fol. 202] Q. In other words, with cars on both tracks you have got room to walk through?

A. When there is cars on both tracks, yes, there would be room to walk between 14 and 15.

Q. When you started to walk west was Mr. Jetter with you?

A. Right close by, I wouldn't say in a foot or two, but he was there in company with me.

Q. Was he ahead or back of you?

A. I wouldn't attempt to say that.

Q. Were you walking side by side or one in front of the other?

A. I told you we were in company, but I wouldn't say the exact position.

Q. Just where were you when you stepped south across 15 track.

A. I didn't say I remember crossing 15 track, just where I was at the moment, I couldn't say.

The Court: Did you step across there before you noticed Chamberlain, or after?

The Witness: Your Honor, Chamberlain's cut came on down——

Mr. Allen: A little louder, please.

The Witness (continuing): Chamberlain's cut came down and hit ours, and we secured our draught in the usual manner, and I came up and saw this club in Chamberlain's draught of cars.

The Court: I understand that, but for some reason Mr. Sansone is very anxious to know when you went south across track 15. Was that before or after you saw the body of Chamberlain?

The Witness: As I remember—it was two years ago, [fol. 203] you know—it was just before I saw the body of Chamberlain. That is as I remember it, but I may be mistaken.

Q. When you refer to those cars coming in contact with yours, you refer to Chamberlain's draught, and you say you didn't see Chamberlain on them?

A. The term is this, it is Chamberlain's draught, and he was credited with the cut coming off, as I understand it, and we term it Chamberlain's draught—Jetter and myself, that is Jetter's and mine.

Q. Then, when you are talking about Chamberlain's draught, you are talking about something that somebody told you?

A. I didn't say that, but I might say, "cars", or "nobody's", if you want me to.

Q. Cars that you don't know who rode?

A. I didn't see Chamberlain riding them.

Q. As you were proceeding west from your draught, did you walk up between 14 and 15, or between 15 and 16?

A. I couldn't say.

The Court: He has already stated that time and again.

Q. Were there any cars on 15?

The Court: He said there were not.

The Witness: Yes, sir; I remember there was none.

Q. Now, you heard Mr. Jetter holler, didn't you?

A. The first thing after we got off of the cars and I had [fol. 204] taken the club out we saw an object that turned out to be a patch of grass along the rail.

Q. You first saw the patch of grass?

A. That is what it turned out to be.

Q. Did you go up and take the brake stick out?

A. I did; yes, sir.

Q. Was the brake applied at that time tight?

A. It was not tightly applied; no, sir.

Q. Was the brake on?

A. The brake wheel was loose, to this extent, when I took the club out, I took my hand and it went like that (indicating), that is the usual manner for a brakeman when he comes in contact with any brake.

Q. Did you tighten it to see whether it was on?

A. I didn't tighten it.

Q. Was the dog in—the ratchet?

A. I couldn't say that, some of them dogs is automatic.

Q. How about this one?

A. Couldn't say about that.

Q. Couldn't you look and see whether the dog was on or not?

A. I might have looked, but I don't remember if it was on.

Q. What kind of a step was this that the brakeman was on?

A. There is no step on that car.

Q. What was it, the end sill?

A. Yes, sir; the end sill, standard equipment.

Q. At some time or other you saw a draught coming off, a draught referred to as nine cars?

A. Yes, later on.

Q. How far were you from your draught when you saw that?

A. I don't know as I could remember it to state it in distance.

[fol. 205] Q. Had you walked sometime before you saw a draught of cars?

A. Yes, sir; it was quite a way back from our draught.

Q. Then somebody hollered?

A. Yes, sir.

Q. Was there a hollering to stop the draughts once or more than once?

A. I couldn't say how often. Jetter hollered, but I wouldn't say how often.

Q. Did you hear him holler more than once?

A. I wouldn't say.

Q. Just what did he say?

A. I wouldn't say the words he said, whether he said hold them or stop them, or words a brakeman would know enough to stop his draught.

Q. Just how far to the rear of your draught was this clump of grass you are talking about?

A. I didn't measure it.

Q. Had you walked some distance when you saw it?

A. We saw the clump of grass.

Q. I am just asking about you now. Just how far had you walked to the west before you saw a clump of grass?

Mr. Allen: I object to the question, he has not said he walked west when he saw it.

The Court: Ask him where he was when he saw the grass.

Q. Where were you when you saw the clump of grass?
A. I was at the head of Chamberlain's draught, or, in other words, at the hind end of our draught.
Q. Just how big was this clump of grass?
[fol. 206] A. How big?
Q. Yes, what area did it cover?
A. I didn't measure it.
Q. How far west of you was it?
A. I judge it to be six or seven cars; that is my judgment, remember.
Q. Finally after that nine-car draught came, you say another draught came in?
A. I didn't say nine cars came in between that grass and our draught.
Q. Nine cars came in on the track, didn't they?
A. Later.
Q. That is what I mean. After you saw the nine-car draught, did you see another draught coming in on this same track, Roberts' draught?
A. I don't thoroughly understand just how you mean that.
Q. You had the first drag in there?
A. We had, to my knowledge, the first cars on 14 track, yes.
Q. Then you say two cars came behind you?
A. Yes, sir; known as Chamberlain's draught.

Mr. Sansone: I move to strike out what it is known as.
The Court: All right, strike it.

Q. After that, there was another draught ridden by two brakemen, wasn't there?
A. Another draught ridden by two brakemen?
Q. Yes?
A. I didn't say there was.
Q. Was there another drag in there, nine cars?
A. There was a draught of nine cars on 14 track later, yes.
[fol. 207] Q. After the draught of nine cars there was still another draught coming in?
A. Later, yes.
Q. Did Jetter holler once or more than once to anybody to stop draughts?

A. Jetter hollered, I wouldn't say how many times.

Q. Did he holler to stop Roberts' draught?

A. He hollered, yes.

Q. And that is the time when you heard them holler, when Roberts' draught was coming in, wasn't it?

A. I didn't say so.

Q. Well, did you hear them holler when Roberts' draught was coming?

A. I heard Jetter holler to hold them, or words to that effect.

Q. Did that happen on one occasion?

A. It might have happened on two or more.

Q. I am not talking about when he hollered to them to stop the draught that he hollered more than once at them, but I mean did he holler on more than one occasion?

A. The difference is this——

The Court (interposing): Yes, no, or I don't know, are the only three answers to a question of that kind.

The Witness: The nine-car draught came down there and Jetter hollered for them to stop.

Q. Did he holler for Roberts' draught to stop?

A. Yes.

Q. You say he hollered more than once then to stop?

A. He hollered for each draught.

Q. Did you count the cars in that draught?

[fol. 208] A. No, sir.

Q. You don't know whether when you came up there, there was 10 or 11 cars in that draught ridden by the two brakemen?

A. No, sir.

Q. When you are talking about 9 cars, you are talking about something somebody told you as to what was on the draught?

A. Certainly.

Q. You don't know whether there was 9, 10, 11 or 12?

A. I couldn't swear to it. You said there was nine cars in the draught, and I used that term.

Q. You said nine cars to Mr. Allen, didn't you?

A. I said there was a draught, but I don't remember mentioning any number of cars to say for certain any number.

Austin S. Stout, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Allen:

Q. Mr. Stout, you are employed by the Pennsylvania Railroad?

A. Yes, sir.

Q. As what?

A. Brakeman that day.

Q. What are you employed at now?

A. On the road.

Q. What is that?

A. On the road.

Q. On the road as what?

A. Brakeman on the road.

Q. How long have you been employed by the Company?

[fol. 209] A. 22 years, 7 months.

Q. On November 3, 1929, were you working in the West Morrisville yard?

A. Yes, sir.

Q. As what?

A. As brakeman.

Q. Were you engaged in the classifying of cars in the West Morrisville yard at the time Chamberlain was hurt?

A. Yes, sir.

Q. What draught were you riding?

A. The nine-car draught.

Q. For what track?

A. 14 track.

Q. Where did you get on that draught?

A. West of the hump.

Q. How many brakemen were on the draught?

A. Three.

Q. Who were the other two?

A. Oscar Reeves and Howard Allen.

Q. What part of the draught were you on?

A. The head end.

Q. When you say head end, do you recall which car at the head end you were on, the first or second?

A. I got on the second and third car west of the hump and applied the brakes.

Mr. Sansone: Which one?
The Witness: Second and third.

Q. Were there two brakes there together?

A. Yes, sir.

Q. Where was Reeves?

A. He was further back.

Q. Where was Allen?

A. He got on the rear end.

Q. Now, this draught of nine cars was for what track?

A. Going down 14 track.

[fol. 210] Q. Were they loaded cars?

A. Yes, sir.

Q. Loaded with what?

A. Gravel and sand.

Q. On those cars, sometimes the gravel and sand will joggle out on the end sills?

A. Yes, they do.

Q. State what you did as you came over the hump and went down 14 track?

A. As the cars was pushed over the hump I applied two brakes, which was the second and third car, the west end of the second car and the east end of the third car, and after we got down the ladder aways I walked ahead of the first car which was a G. L. hopper loaded with sand, and put that brake on.

Q. Where was that brake?

A. On the east end.

Q. Then what did you do?

A. I looked back after getting on 14 to see whether there was anything coming or not, and I looked ahead to see how far I was from the draught on the head end.

Q. Could you see the cars ahead of you on 14?

A. I saw the cars down at the other end.

Q. And you judged how far you were, and where you would have to go before you coupled on the cars?

A. Yes, to couple up with them in what distance.

Q. What then, did you notice or see?

A. I didn't see anything at that time. I looked back to see whether anything else was coming back of me after I got on 14 track about six car lengths, and happened to glance down and saw this young man lying down between the rails.

[fol. 211] Q. About how far ahead of you was he when you glanced down?

A. Not over ten feet.

Q. Up to that time you had been looking ahead to see the cars you had to go against and looking back to see if any cars were coming?

A. Yes, sir.

Q. Where were you standing at the time you saw this man ahead of you?

A. On the first car.

Q. At what end?

A. The east end.

Q. On the very head of the car?

A. Yes, the east end brake.

Q. Where was this man?

A. Between the rails.

Q. Did you hear anybody holler?

A. I didn't hear anybody holler that time, no.

Q. What did you do then?

A. I tried to apply the brake a little tighter and by that time we had reached the body.

Q. And about how far did you move before your draught came to a stop?

A. Why, it passed the body, nine car lengths.

Q. What is that?

A. Nine car lengths.

Q. When you came to a stop, about how far ahead of you was the rear end of the car east of you on Track 14?

A. I should judge about five or six car lengths.

Q. What did you do when you brought your nine cars to a stop?

A. I got off.

Q. Where did you go?

A. I walked back to the hind end.

Q. When you got back there did you see Chamberlain?

A. Yes, I saw him there.

Q. Where was he by the time you got back?

[fol. 212] A. I guess they had picked him up from between the rails by that time.

Q. Who did you see back there?

A. I saw Howard Allen and Roberts.

Q. Did you see Jetter and Geddes?

A. I don't think they were back there at that time.

Q. Where did you see Roberts?

A. Roberts' cut followed us right down on that track.

Q. How far in the rear of your nine-car draught was his draught stopped?

A. It was not very far, I couldn't estimate the distance.

Q. Now, what was done with Chamberlain?

A. Picked him up and put him on the motor car on a stretcher, rather.

Q. You were not back to the rear of your draught when Roberts came to a stop, were you?

A. I don't think so.

Mr. Sansone: I object to the question because leading.

The Court: Don't lead the witness.

Q. When you got back there, was Roberts' draught already there and stopped?

A. Yes, I think it was; I am pretty sure it was.

Q. After you came to a stop did you get off immediately from your draught?

A. Yes, sir.

Q. You didn't have to anchor your draught?

A. We were already anchored.

Q. You had put your brakes on?

A. Three brakes were on all of the day down.

Q. Then you went back west?

A. Yes, sir.

[fol. 213] Cross-examination.

By Mr. Sansone:

Q. When you got off did you run back fast?

A. I walked back.

Q. You tried to stop because of somebody you saw on the track, did you?

A. Yes.

Q. Did you walk back slowly or hurry back?

A. I hurried back.

Q. Did you run back?

A. I hurried.

Q. Did you walk or run?

A. I walked fast.

Q. As fast as you could?

A. Yes.

Q. And when you got back to the rear end of your draught Roberts' draught had already come down behind you and stopped, right?

A. Yes.

Q. He was actually stopped when you got there, Roberts, is that right, in back of your draught?

A. I should judge so, I am not positive.

Q. You have told us he was stopped, haven't you?

A. (No answer.)

Q. They were shifting those draughts down there pretty fast, weren't they?

Mr. Allen: I object to the question.

The Witness: No, they weren't coming fast.

Q. I mean they were cutting them off pretty fast at the hump, weren't they?

A. Only on the normal.

Mr. Allen: I object to the pretty fast.

The Court: Objection overruled.

[fol. 214] The Witness: Cutting off at the normal speed.

Q. They were cutting off so fast that you stopped and hurried back as fast as you could, and another draught had come in and was already stopped in back of yours?

Mr. Allen: I object to that question and to the form of the question.

The Court: Why?

Mr. Allen: Because the question is leading, suggestive and argumentative.

The Court: He is cross examining so the objection as to the question being leading is no force. It may be argumentative but the witness has testified he stopped his draught on seeing the party on the track and got down and hurried back, and when he got there he found Roberts who had brought another draught and Allen, I believe, had already gotten the body off of the track, so I think counsel is justified in asking the question.

Q. Was Roberts there, when you got there, or was he on the ground?

A. I couldn't say positively, that is two years ago.

Q. Who was there when you got there to the body?

A. I know Howard Allen was there, I am positive of that.

Q. He was your rear brakeman?

A. Yes, he was the rear brakeman.

[fol. 215] Q. As you were going in on 14 did you see anybody there ahead of you, any man walking?

A. In on 14?

Q. As you were going down into 14, did you see any man walking around there?

A. From some of the cut down below.

Q. Who did you see down there?

A. Jetter and Geddes.

Q. How far away from you were they?

A. I couldn't tell you that, I don't know.

Q. Were they right close ahead of your draught?

A. Quite a ways away.

Q. Anyway, you didn't hear anybody holler to you?

A. No, not that time.

Q. Well, at any time?

A. No, I didn't hear any sound. Of course, my brakes was making a noise and that drowned the sound.

Q. Did you see Mr. Chamberlain from the top of the hump down?

A. You mean from the top of the hump?

Q. Did you see him get up on his draught?

A. Yes, I saw him get on at the hump, because I was on the second cut back of him.

Q. Did he get on ahead of you?

A. Oh, yes.

Q. What did you see him do when he got up there?

A. I saw him climb on his cut, and I walked back and got on my cut.

Q. You didn't see him put the brake on?

A. No, I didn't see him do that.

Q. How far west of the top of the hump was it that you got on?

A. They keep walking on down, the train is moving, you know.

Q. Yes, I know.

A. Four or five car lengths, I should judge back.

[fol. 216] Q. And from the time that Chamberlain got on to the time that you were cut off and started down with your draught, that draught kept coming right along, didn't stop at all?

A. They keep cutting off as long as men are there to take them.

Q. And as Chamberlain's draught dropped over, the next draught came up and dropped over, and the train kept going, and you dropped over, in the next order, and there was no cessation at all of the work?

A. No, no stop at all.

Q. You say when you got on, you got on at the rear of the second, or the head of the third car?

A. Between the second and third car.

Q. That is the rear of the second car and the front of the third?

A. The east end of the third.

Q. You had two brakes together there?

A. Yes, sir.

Q. How many car lengths in back of you was Allen?

A. He was on the rear.

Q. And Reeves was in between?

A. Reeves was in between.

Q. And as you got on there, how many brakes did you apply?

A. I applied two going over the hump, when I kept on going over the hump.

Q. As soon as you got on, did you test those two brakes?

A. I took the slack up, as I always do that.

Q. Did you do it on both of them?

A. Yes.

Q. Did you pull up tight enough to see if you had braking power?

[fol. 217] A. We always put the brake on as soon as we got over the hump.

Q. Before you let go, did you pull up on the brakes tight enough to see if you had good braking power?

A. Always put them on over the hump.

Q. Before you got over, did you put on the two brakes to find out——

A. (Interposing) That is liable to stop the train if you put them on with the hump.

Q. You say if you put on brakes there you are liable to stop the train with the engine pushing?

A. Yes, sir; I have seen it done many a time if you put brakes on real tight.

Q. You didn't know until you started down the hump whether you had good brakes or not?

A. Oh, yes, I know, I put them on as they drop over the hump.

Q. What if you have just got two cars and you are riding down the rear of the second car, did you put the brake on just as you got over the hump?

A. I had nine cars.

Q. I am asking you to assume now, if you had two cars and you are going to be cut off and the brake is on the rear end of the second car, you say you wait until you get over the hump to put on the brakes?

A. Only on a big cut.

Q. So that if you have got a small cut you put the brakes on first?

A. Take the slack off.

Q. Do you tighten up enough to know whether you have got a good brake?

A. Tighten up to a certain extent.

Q. But you don't do that with a long draught?

[fol. 218] A. No.

Q. So you don't find out whether you have got good brakes or not until you start going down the hill?

A. We know before we are cut off whether we have good brakes or we couldn't be cut off.

Q. You say you don't tighten them hard enough until you get over the hump?

A. We can tell if there is braking power there.

Q. How soon after the car that you were on, the second car, got over, how far over the crest of the hump did you get before you put on your brakes?

A. The third car.

Q. I mean how far down past the point where you drop over the high point of the hump—how far down east of that had you gotten before you put on any brakes?

A. I started winding them on just as soon as it started over the peak.

Q. How fast were you going as you started going over the peak?

A. We were going normal gait.

Q. How fast was that?

A. Not much more than an ordinary walk.

Q. Around four miles an hour?

A. I am not saying what distance or time.

Q. What do you figure is an ordinary walk?

A. A man walking along, natural gait, that is the way they are pushed over.

Q. Take four miles an hour, is that your conception of what it is?

A. I am not saying what the speed is, for I don't know.

Q. Your first two cars went over at a gait of two miles an hour—going over as fast as you could walk?

[fol. 219] A. As fast as you can walk.

Q. How many cars did you go before you picked up speed at all?

A. I don't know that we picked up any speed at all, because I started winding the two brakes up and it helped check them.

Q. You say with the two you put on you continued in about a normal speed, but not checking the speed?

A. I didn't say that.

Q. Well, how far did you go before they started to pick up and go faster?

A. They didn't pick up and go faster, they went the natural gait.

Q. And that, as you say, was as fast as you can walk?

A. The hind end hadn't got over the hump.

Q. When the hind end got over the hump, how fast did they go?

A. Went the natural gait.

Q. What is that?

A. It is not an excessive speed, that is one thing sure.

Q. I am not asking about excessive speed, but did they pick up speed after the hind end got over the hump?

A. Might pick up a little faster after they get over, because you have got a grade.

Q. It is a fact that after a few cars get over, the cars pull the rear end over?

A. No, your brake is on the head end to hold the slack together.

Q. Do I understand that you didn't separate your nine cars until the ninth car is over the top of the draught?

A. No, the man has walked back and made the cut already.

Q. I am talking about a separation, because the making [fol. 220] of the cut, that pulls the draught ahead when you separate the drag and it goes over the top of the hump.

A. You mean in uncoupling them.

Q. Yes, just separate like you separate your hand. You say the brakes you put on keep those cars tied to the engine until the engine pushes them right over the hill?

A. Not right over the hill, they are over the hill when they are let loose.

Q. If you have got the brake on holding back, how do they let loose?

A. Two brakes ain't going to hold nine cars.

Q. Then they do pick up speed after they get over the hump, don't they?

A. Pick up a little.

Q. What is the fastest you have seen cars going down there that you have ridden?

A. I can't tell you.

Mr. Allen: One moment, I object to that.

The Court: Well, he says he can't tell.

The Witness: I have seen cars run away.

Q. Sometime or other you picked up speed enough so that you thought it necessary to leave those two brakes you had, didn't you?

A. I walked ahead to get to the head end.

Q. To put on some other brakes?

A. To put on some other brakes and to see down the track.

Q. What did you go down chiefly for, to put on brakes, or [fol. 221] to see down the track?

A. What do you mean, the head brake?

Q. Yes, what brought you down there?

A. Down, where do you mean?

Q. To the head end of the draught?

A. I walked ahead.

Q. Did you go down there chiefly to look ahead or to put on more brakes?

A. No, to see where the hind end was.

Q. The hind end of what?

A. Of the cut that went down ahead, because I had two hoppers, those high ones ahead of me, and I couldn't see.

Q. You often ride a low hopper down there?

A. Yes, and often go down on a high one, too.

Q. You often go down on the second car, with a car ahead of you?

A. Sometimes, but we generally pick out the best brakes.

Q. Some of them don't work so good?

A. There is some work mean.

Q. Was it because you wanted to check up, and put on the brake, that you went down to the first car?

Mr. Allen: I object to that, if your Honor please.
The Court: Overruled.
The Witness: I had two brakes on already.

Q. When you got down, did you put on the front brake?
A. I wouldn't go ahead if I didn't put the brake on.
Q. How?
[fol. 222] A. I wouldn't go up ahead if I didn't put the brake on.
Q. In other words, you would not have gone ahead if you didn't put the brake on?
A. What is the use of going ahead if you don't put the brake on?
Q. That is what I asked, so you didn't go down to look ahead, you went down to put the brake on?
A. It stands to reason a man would put the brake on and look ahead.
Q. You went down to put the brake on and not to look ahead?
A. I didn't say any such thing.

The Court: The important matter is he went to the head of the car, and what his motives were is not important.

Q. Just where was your draught or the car that you were standing on when you started to walk ahead, when you left your position on the rear end of the second car?
A. I couldn't tell you that.
Q. How long after you left the top of the hump did you leave your position on the second car and start down to the first one?
A. After the second and third had the brakes applied.
Q. How long did it take you to do that?
A. I don't know.
Q. Had you reached the switch leading into No. 14 when you started walking ahead?
A. Before.
Q. What?
A. Before.
Q. Now take it this way, just how far east of the hump [fol. 223] had you gotten when you started putting the brake on?

Mr. Allen: Which brake?
Mr. Sansone: The first one he put on.

Q. Which one did you put on first?

A. The second and third brake you put on right after you drop over the hump.

Q. Was it right after you separated from the engine?

A. Three cars, I applied the brake.

Q. Did you start applying the brake after your draught separated from the draught still on the top?

A. I started applying brakes as they was going over the hump.

Q. How far down did you get before you had them both on?

A. I can't tell you that, I don't know.

Q. Had you passed the switch of 18 when you started over to the first car?

A. I can't tell you, because I don't know where I was at that time.

Q. How fast in miles would you say you were going at the time you left your second car and started to the first?

A. At a normal rate.

Q. When you say normal rate, what does that mean in miles per hour in railroading on that hump?

A. It stands to reason after your slack all gets together that they will increase to a little extent, heavy laden.

Q. The extent to which they will increase the speed of course depends on how good your brakes are?

A. Well, they was good brakes, I know that.

Q. I know, but I say the extent to which they will increase [fol. 224] the speed depends on how good your brakes are, doesn't it?

A. If you have brakes on when you start, after you drop over the hump, as a rule they don't go down very fast.

Q. You said you were going at a normal speed when you started for the head car. Now, I would like to get from you, if you can tell us, what is a normal speed going down from that hump into the yard?

A. I can't tell you.

Q. Is it as much as ten miles an hour?

A. I cannot answer that for I don't know.

Q. What have you observed is the usual speed at which they go down?

A. I am no judge.

Q. You have no idea?

A. No.

Q. And you can't give us any idea how fast you were going in speed down that hill?

A. I know I was not going fast, I know that.

Q. What you mean is fast and what I understand is fast, may not be the same. When you say you are not going fast, what do you mean in miles per hour?

A. I don't know the speed in miles per hour.

Q. When you refer to it as going slow, what do you have in mind in miles per hour?

A. I don't know that.

Q. You have worked as a railroader there, how long?

A. 22 years.

Q. You are now in what service on the road, just what job do you have on the road?

A. N-10 and N-5.

Q. What is that?

A. That is a road job.

Q. That is on a road freight engine?

A. Between Mansic and Greenville.

Q. Between where and where?

[fol. 225] A. Between Mansic and Greenville.

Q. That is a distance of how far?

A. I don't know the distance.

Q. And now on this railroad job you have to work by time-table, don't you—on these jobs you work by time-table?

A. We are supposed to be there by a certain time.

Q. You know when you are supposed to leave and when you are supposed to get there?

A. Yes.

Q. You have to watch the mileage and time all of the time, don't you?

A. Sometimes, so that we don't make a misconnection.

Q. You have been on that kind of work how long?

A. Not very long.

Q. Well, how long?

A. Three or four months.

Q. Working on the road jobs, where you have to work between places all of the time, you still say you can't give us any idea of speed?

A. No.

Redirect examination.

By Mr. Allen:

Q. Mr. Stout, you said in reference to Mr. Sansone's question about the brakes on your car, you could tell if there was braking power there before you went over the hump, how do you tell that?

A. We generally try them, tighten them up.

Q. Did you try this one that night?

A. Oh, yes.

Q. Were your brakes good that you handled that night?

[fol. 226] A. Yes, sir; they were all working good.

Recross-examination.

By Mr. Sansome:

Q. Had your train finally gotten into 14 when you finally got on the first car?

Mr. Allen: He has answered that several times, your Honor.

The Court: Let him answer it again.

Mr. Allen: Exception.

The Witness: I do not positively know now.

A Juror: What was the last question, please?

Mr. Sansone: I asked him had the train gotten into Track 14 when he got on the first car, and he said he didn't know.

Mr. Allen: That is not what he said. What his answer was I would like to have read, please.

(The answer of the witness read as follows:) "I do not positively know now."

Oscar Reeves, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

[fol. 227] Direct examination.

By Mr. Allen:

Q. Mr. Reeves, you are employed by the Pennsylvania Railroad Company?

A. Yes, sir.

Q. As what?

A. Brakeman.

Q. How long have you been employed?

A. 20 years.

Q. On November 3, 1929, were you working as brakeman in the West Morrisville yard?

A. Yes, sir.

Q. Engaged in classifying cars down in Yard A, is that right?

A. Yes, sir.

Q. Did you -now Mr. Chamberlain?

A. He was there a short time, I knew him.

Q. On this night did you ride any draught of cars down onto Track 14?

A. Yes, sir.

Q. How many cars were in that draught?

A. Nine.

Q. Were other brakemen riding that draught with you?

A. Yes, sir.

Q. Who were they?

A. Mr. Stout and Mr. Allen.

Q. Where was the draught when you got on it?

A. It was at the west end of the hump.

Q. What part of the draught of nine cars did you get on?

A. About the middle.

Q. Where was Stout?

A. On the head end.

Q. Do you know exactly what car he was on?

A. No, sir.

Q. Where was Allen?

A. On the rear somewhere.

Q. Now, when you got on, did you try the brakes near you?

A. Yes, sir.

Q. How did you try the brakes?

A. Tightened up on the chain with the club.

the chain with the club.

[fol. 228] Q. By that, can you tell whether you are going to get an application of the brake?

A. Yes, sir.

Q. Just state what you know, after you went over the hump, about going down in 14 track—you started down into 14 track, did you?

A. Yes, sir.

Q. Did you see any cars ahead of you from where you were around the center of the nine-car draught?

A. I don't remember seeing any ahead, no, sir.

Q. Did you see Mr. Chamberlain's body ahead of you at all?

A. Not until I got off my nine-car cut.

Q. After you got off?

A. Yes.

Q. Did your draught of nine cars stop before you came in contact with any cars ahead?

A. Yes, sir.

Q. What did you do then?

A. We got off the cars.

Q. Where did you go?

A. Walked toward where the body was.

Q. That would be westward?

A. Yes.

Q. Did you see Mr. Chamberlain?

A. Yes, sir.

Q. Where was he when you got there?

A. Lying between 14 and 15 tracks.

Q. He was still between 14 and 15 tracks?

A. Yes.

Q. So you got there before they moved him?

A. Yes.

Q. Was the other brakeman Allen there?

A. I don't remember who was there.

[fol. 229] Cross-examination.

By Mr. Sansone:

Q. Mr. Reeves, I wonder if you can tell us how fast you were going down that hump?

A. No, sir; not the real speed, you have to have a speedometer to tell that.

Q. Can you tell us whether you were going fast or slow?

A. Just the usual rate of speed, I believe.

Q. You say you believe?

A. I believe.

Q. Is there any question in your mind about it?

A. No, sir,—there is a question, because it has been two years ago, and I don't remember how fast we were going.

Q. It is so, that when you get over the hump, they pick you up?

A. If your brakes are not any too good they would pick up.

Q. Then if you have good brakes, if you have nine or ten cars, with a tonnage of about 70 tons to the car, that would pick up?

A. They naturally would.

Q. And they did, on this date?

A. I tell you, I don't know the rate.

Q. You say they would naturally pick up, with all of that tonnage?

A. Naturally would, if they weren't brakes on the head end.

Q. I say with good brakes and with this tremendous load they would naturally pick up speed?

A. Not necessarily.

Q. Whether they did or not, this day, you don't know?

A. I don't know.

Q. You know nothing about the accident?

A. No, sir; nothing about the accident.

Q. When you walked back and saw Mr. Chamberlain's [fol. 230] body there——

A. (Interposing:) Yes, sir; I saw his body.

Q. When you got there was Mr. Stout there?

A. I don't remember seeing anybody there.

Q. Were you the first one there?

A. No, I don't think I was the first one there.

Q. Do you know how many people were there?

A. No.

HOWARD ALLEN, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Allen:

Q. Mr. Allen, you are employed by the Pennsylvania Railroad Company?

A. Yes, sir.

Q. As what?

A. As a brakeman.

Q. How long have you been employed, about?

A. 20 years.

Q. On November 3, 1929, were you employed as brakeman in the West Morrisville yard?

A. Yes, sir.

Q. Were you assisting in the classification of cars over the hump that afternoon?

A. Yes, sir.

Q. Did you ride a draught over the hump for Track 14?

A. Yes, sir.

Q. How many cars were in that draught?

A. Nine.

Q. What other brakemen were with you on that draught, if any?

A. Oscar Reeves and Austin Stout.

[fol. 231] Q. Where was the draught when you got on?

A. West of the hump.

Q. What part of the draught did you get on?

A. The last car.

Q. Where was Reeves?

A. Reeves was in the middle.

Q. Where was Stout?

A. On the head end. I couldn't say exactly whether he was on the head car or the second or third car, but somewhere in there.

Q. Before you got to the top of the hump, did you try the brake on the rear end?

A. Yes, sir.

Q. How did you try that?

A. I put it on and kept it on.

Q. Was that before you got to the top of the hump?

A. Before we got to the top of the hump.

Q. The rear one is put on there?

A. The rear one is put on then.

Q. When you got over the hump and started down to Track 14, did you remain on the rear car all of the time?

A. All of the time.

Q. As you come down to Track 14 you went in on it, did you?

A. Yes, sir.

Q. Could you see cars ahead of you on that track?

A. After the car had taken the bend on 14 track I could see cars ahead of me.

Q. Whereabouts on Track 14, would you see them?

A. From the appearance they were down at the east end.

Q. At any time as you were riding down there, was your attention attracted to anything?

A. What is that?

[fol. 232] Q. At any time as you were riding down there was your attention attracted to anything by anyone calling?

A. Why, yes, after I got in on the track I heard someone holler, but I couldn't distinguish what he was saying.

Q. Did you look back at all?

A. I looked back, yes.

Q. When did you look back?

A. I looked back right away, because there was a man following me on the draught, and I thought he might not have his cars under control.

Mr. Sansone: How is that again?

The Witness: When I heard the hollering I looked back. I thought maybe the man following me didn't have his car under control.

Q. And that he was warning you?

A. The shout wasn't to me, but I happened to look back to protect myself.

Q. To look back to see if it was someone coming in to you?

A. Yes.

Q. As you looked back, did your draught come to a stop shortly afterwards?

A. Just drifted along slowly.

Q. What, if anything, did you see as you were looking back?

A. I happened to look down, and as I looked down, at my car, at the west end, I seen Chamberlain's face.

Q. The face of a man, who was Chamberlain?

A. His face was up.

Q. How far did the rear car on which you were riding go before the draught actually came to a stop?

[fol. 233] A. As far as I can remember, maybe around six feet from him.

Q. Up to *the* that time you hadn't seen Chamberlain at all on that trip down?

A. No.

Q. What did you then do?

A. When I seen Chamberlain's face I stepped right off.

Q. Did anyone else come there?

A. If I ain't mistaken, I think Geddes and Si. Roberts came there.

Q. Where did Roberts come from?

A. From that draught following me.

Q. Did that draught stop to the rear of you?

A. Yes.

Q. About how far?

A. It stopped west of me, I didn't take it in inches, I had Chamberlain in my arms, but I judge around five or six feet.

Q. When you got down from your draught, what did you do the first thing?

A. The first thing I done, I took Chamberlain up. He laid between the two tracks of 14 and we picked him up and laid him between 14 and 15—in the pathway.

Q. You say, "We" who helped you?

A. Roberts and Geddes.

Q. You laid him between the rails of 14 and 15—I mean between the two tracks?

A. Yes.

Q. What did you do then?

A Got the motor car and took him up the hump, and got a cabin car and took him to the hospital.

Q. At any time did your draught of nine cars come in contact with any cars ahead of you that day?

A. No, sir.

[fol. 234] Cross-examination.

By Mr. Sansone:

Q. Were you on the rear end of the ninth car?

A. I was on the west end of the ninth car.

Q. And as you go down the hump that is the rear end of the last car?

A. That is the rear end of the last car, yes.

Q. You are on the one that is the last to separate from the drag that is attached to the engine?

A. No, we wasn't last to the engine.

Q. No, I know that, but you are the one that separates from the drag that it attached to the engine?

A. Yes.

Q. Just how far west of that hump, were you when you put the brake on?

A. I judge around about three or four car lengths.

Q. In other words, you were three or four car lengths west of the hump?

A. Yes.

Q. How far west of the hump were you when you were on the draught?

A. I was back of the cars that went down—I think they went to 20—I was standing back there waiting.

Q. When you got on your draft, how far west of the hump were you?

A. How far west of the hump I was—well, about eight car lengths.

Q. You got on there, and you tested the brake when you——

A. (Interposing.) When the cars were pushing over the hump.

Q. Up to that time you hadn't tested your brake?

A. No.

Q. So you were riding on that draught for five car lengths before you started to test your brakes?

A. Five car lengths—I had to slack up and test before we get on top of the hump. I put my brake on and kept [fol. 235] it on.

Q. How far west of the hump were you when you separated from the engine?

A. How far was we west?

Q. Yes.

A. I don't believe the cars separated until we was about a car length, practically right on top of the hump.

Q. In other words, your car was on the hump when they separated?

A. I believe a little west of it, maybe, half a car length or a car length.

Q. After they separated you started to tighten up on the brake?

A. No, I didn't tighten up then, because I had the brake on.

Q. After you got over the hump did your cars pick up speed?

A. No, we didn't pick up speed.

Q. Continued at the same speed?

A. The same speed, yes.

Q. What speed was your engine pushing you along then?

A. Very slowly.

Q. What rate of speed?

A. When he was pushing them over the hump it was a good slow walk.

Q. Somebody has referred to two miles an hour speed that the engine pushed the cars over.

A. I can go an ordinary walk and pass the cars when he is pushing them over the hill.

Q. You can't attempt to give it to us in miles an hour?

A. No, I couldn't give it in miles. I walk ahead of the cars in an ordinary walk.

Q. Then after you let go there wasn't any difference at all?

A. No, because I had——

Q. Listen to the question. There was no difference in the speed when you got over?

A. No, because I had the hind end tight.

[fol. 236] Q. You had only one brake on the hind end?

A. That is sufficient.

Q. Sufficient for what?

A. To tie the hind end down and keep the slack from running in on you and keep from coming down the track.

Q. That don't keep you from picking up speed?

A. Yes, it does.

Q. The weight you have in nine cars is 70 tons apiece, and you say by tightening up on the rear brake that you hold them right there?

A. I say I had my brake when we went over the hump.

Q. Have you ever seen cars go down there and pick up speed with the brake on?

A. With brake on?

Q. Yes.

A. Not one single car unless the man releases it.

Q. At any time after you got over the hump did your cars pick up speed at all?

A. No, sir; no speed at all.

Q. In all of the time, you say you could have walked ahead of that draught, all the time?

A. I could have walked right ahead of it, easy. I could have stopped it right away without taking an extra step.

Q. How long did it take you to go down to 14 at that speed, in minutes?

A. I couldn't tell you the minutes it takes to go down there, I don't keep my watch on them.

Q. You say when you heard somebody holler you looked around and thought something was coming down on you?

A. Yes, I naturally would.

Q. And as you looked west you saw Roberts' draught [fol. 237] coming?

A. Yes.

Q. How close was he to you when you looked around?

A. Probably when I looked around at Roberts' he was about four or five car lengths behind me.

Q. In other words, he was following you down there, and how far were you in on 14, that is the rear end of your draught, how far in on 14 were you when you looked around and saw Roberts—how many car lengths do you say, four or five?

A. Roberts was three or four car lengths behind me on 14.

Q. When you heard somebody yell and you looked around?

A. Yes.

Q. The part of the draught, where you were, was on 15?

A. That was in on 14.

Q. How far past the switch leading into 14 was the draught, and the car you were standing on?

A. Well, I should judge about four car lengths.

Q. So he was right on the switch coming right in behind you when you looked after you heard somebody yell?

A. He was just dragging around, yes.

Q. At this switch coming in on 14. Was he moving then?

A. Yes, he was moving.

Q. How fast was he moving?

A. Not very fast, coming down with his cars under control.

Q. How many years were coming in there?

A. In my estimation, I think he had three.

Q. When you talk about Roberts, that is the man that testified here this morning?

A. Yes.

Q. And the man that testified as you remember, that Chamberlain was going down and he was standing over here [fol. 238] by the yard office, is that the fellow you refer to that was the one right in back of you?

A. There is only one Roberts here, isn't there?

Q. That is Mr. Roberts that testified here this morning——

Mr. Sansone: Mr. Roberts, will you stand up?

The Witness: Yes, that is the man.

Q. After you heard the yelling or hollering, how far did your draught go before it stopped?

A. Probably nine car lengths.

Q. After you heard the yelling you went nine car lengths?

A. Somewhere around that.

Q. When you heard the yelling you were how many car lengths in?

A. About three or four lengths.

Q. Will you mark here on this drawing, where you were when you heard the yelling?

A. Well, I don't know just the scale here, but I suppose right here, three car lengths would be something around here (indicating).

Mr. Sansone: The witness marks a point with an arrow and cross, and the letters H-A.

Q. You say at that time you were going much slower than a man could walk?

A. Much slower than a man could walk—no, I didn't say much slower than a man could walk.

Q. Didn't you say you could walk much faster than the draught was going?

A. In an ordinary walk, yes, I could stay right by the [fol. 239] cars.

Q. Didn't you say your draught was going slower than a man could walk?

A. Slower than a man could walk? In an ordinary walk I could stay right at the cars.

Q. And that is how fast you say they were going when you heard the hollering?

A. Yes.

Q. As you were going down there, did you see Mr. Stout after you left the hump and when you were going into 14?

A. Yes, I saw Mr. Stout as he was on the draught.

Q. As you were going down did you see him in front of you?

A. No, I couldn't see him.

Q. When you were going around the bend did you see Mr. Stout?

A. I could see Mr. Stout then.

Q. On what car was he?

A. If I remember right, I think he was on the head car.

Q. On the head end of it?

A. No,—yes, on the head end, on the east side.

(Adjourned to Wednesday, January 6, 1932, at 10:30 A. M.)

New York, N. Y., January 6, 1932—
10:30 o'clock A. M.

Mr. Allen: If the Court please, I wish to offer in evidence this diagram showing the entire yard at this point.

The Court: Let it be received.

[fol. 240] (Said map received and filed, marked Defendant's Exhibit A, in evidence.)

Mr. Allen: The defendant rests.

Mr. Sansone: I would like to ask one or two more questions of Mr. Jetter before the defendant rests.

George J. Jetter, a witness on behalf of the defendant, being recalled, further testified as follows:

Recross-examination.

By Mr. Sansone:

Q. Mr. Jetter, you testified yesterday that you went and talked to Mrs. Chamberlain after the accident?

A. Yes, sir.

Q. I want to ask you, did you on or about November 7th, state to Mrs. Chamberlain in the presence of Mr. Chamberlain, the dead boy's father and Miss Helen Cseplo, in words, or in substance, that Chamberlain was riding a cut of cars down the track and that another cut of cars came down after him and bumped into Chamberlain's draught and knocked him off and ran over him. Did you tell them that?

A. Do you suppose I would tell them such a thing as that?

The Court: Don't say that, answer the question.

Q. Did you tell them that?

[fol. 241] A. That would be a lie.

Q. Did you tell that that?

A. No, sir.

Redirect examination.

By Mr. Allen:

Q. Mr. Jetter, I show you Defendant's Exhibit A, these tracks that are marked eastward classification track, are the yards you were working in that night?

A. Yes, sir.

Q. North of this yard is what is called the westward receiving yard, is that right?

A. Yes.

Q. North of that is what?

A. The "E" yard, the new yard.

Q. Was work going on in those yards at night, shifting and classifying cars?

A. Yes, sir.

Q. The office that is marked "N" "U", what is that?

A. That is the main office.

Q. You go there for orders eastward?

A. Yes.

Q. And orders for movements in the westward receiving yard, is this office here marked "West yard office"?

A. Yes, sir.

Mr. Allen: The defendant rests.

John H. Chamberlain, called as a witness on behalf of the plaintiff in rebuttal, being first duly sworn, testified as follows:

[fol. 242] Direct examination.

By Mr. Sansone:

Q. Mr. Chamberlain, you are the father of Charles Chamberlain, the decedent in this case?

A. Yes.

Q. Are you a married man?

A. Yes.

Q. Any children?

A. Seven.

Q. Are you a widower?

A. Yes.

Q. Mr. Chamberlain, keep your voice up, will you? Did you see Mr. Jetter, the witness who was just on the stand?

A. Yes, sir.

Q. Did you see him before today?

A. Yes.

Q. Where did you see him?

A. In my home.

Q. When did you see him at your home?

A. About November 7th.

Q. Did you discuss the accident to your son Charlie?

A. He came to my home——

The Court: Answer yes or no.

The Witness: Yes.

Q. Who was there at the time?

A. My daughter-in-law, Mrs. Chamberlain, Miss Cseplo, and my wife.

Q. What did Mr. Jetter state as to how the accident happened?

Mr. Allen: I object to the question; it is not proper rebuttal and is not in proper form.

Q. Well, did Mr. Jetter state to you in the presence of Mrs. Chamberlain that he had ridden a car down to the east [fol. 243] end of the Track 14 and that the draught that Chamberlain was riding ran into him and that he walked up the track and saw Mr. Chamberlain lying on the ground, and that he proceeded up, and the nine-car draught was coming, and that he hollered to them to stop. Did he say that?

Mr. Allen: I object, it is not proper rebuttal. The witness never stated that he made such a statement to him.

The Court: Overruled.

Mr. Allen: Exception.

Q. Did he ever say that?

A. No.

Q. What did he say as to how the accident happened?

Mr. Allen: I object to the question because it is not in rebuttal.
The Court: Overruled.
Mr. Allen: Exception.

Q. What did he say as to how the accident happened?
A. He came to my house and offered his services as a witness at any time I might call him.

Mr. Allen: I object to that and move that it be stricken.
Mr. Sansone: I consent to strike that out.

Q. Tell us what he said about the accident.

Mr. Allen: I object to the question because it is not proper [fol. 244] in form and is not proper rebuttal.
The Court: Overruled.

The Witness: He said Charles was riding a two-car cut of gondolas of gravel, and they were following him with a nine-car cut and that they bumped and bumped him off.
Q. What bumped him off?
A. The nine-car cut, and there was a man on the front of the nine-car cut, one in the center and one on the rear end, and the man on the rear end was the only one that saw him in between the eighth and ninth car.

Mr. Allen: I move that all be stricken out.
The Court: Motion denied.
Mr. Allen: Exception.

Cross-examination.

By Mr. Allen:

Q. What day was this?
A. I am pretty sure it was on the 7th of November, in the evening.
Q. You say you are pretty sure it was the 7th, have you any doubt about it?
A. No doubt at all.
Q. What day of the week was it?
A. Thursday.
Q. Where do you live?
A. Where do I live?
Q. Yes.
[fol. 245] A. 35 Girard Avenue, Trenton, New Jersey.

Q. Where did you live in November, 1929?

A. 156 Garfield Avenue.

Q. Who lived there?

A. Myself and family, and my son's widow, Mrs. Chamberlain.

Q. Did your son live with you, too?

A. Yes.

Q. All lived together?

A. Yes.

Q. When did your wife die?

A. My wife died the 21st of December.

Q. What year?

A. This year, 1931.

Q. Was she present at this conversation?

A. Yes.

Q. Who is this Miss Cseplo?

A. A friend of Charles' wife.

Q. What time of the day was this?

A. I should judge around five o'clock in the evening.

Q. Do you work?

A. Yes, sir.

Q. What do you work at?

A. I am working for the unemployed on the road.

Q. Where did you work in November, 1929?

A. Mueller Machine Company.

Q. What did you say?

A. Mueller Machine Company.

Q. What time did you quit work?

A. Four o'clock in the afternoon.

Q. Where is their place of business?

A. 21 Broad Avenue.

Q. What place?

A. Trenton.

Q. How long had you been home?

A. I should judge five or ten minutes, something like that.

Q. Was Jetter there when you came?

A. No.

[fol. 246] Q. How long after you came home did he come there?

A. I should judge about 20 or 25 minutes, something like that.

Q. Where were you on the night of November 3rd?

A. Home.

Q. You didn't see Jetter that night?

A. No.

Q. He didn't come to your house that night, the night of the accident?

A. No.

Q. Did you ever see him before November 7th?

A. No.

Q. Did you know him at all?

A. I never knew him.

Q. Did you ever see him since?

A. No.

Q. Who was home the night of November 3rd besides yourself?

A. My wife and children.

Q. What time did you get home that night?

A. I wasn't out.

Q. What day of the week was that?

A. November 3rd, Sunday.

MARGARET V. CHAMBERLAIN, recalled as a witness on behalf of the plaintiff in rebuttal, testified as follows:

Direct examination.

By Mr. Sansone:

Q. Mrs. Chamberlain, you saw Mr. Jetter, the last witness before your father-in-law?

A. Yes, I did.

Q. Do you recall him coming to the house a short time after Charlie was killed?

A. Yes, I do.

[fol. 247] Q. Did Mr. Jetter say to you—by the way, who was there when he came in and talked to you?

A. My mother-in-law was there, and father-in-law, and Miss Cseplo, and myself.

Q. Did Mr. Jetter state he and another brakeman had ridden a cut of cars down on Track 14 and rode all the way in to the easterly end of it, and that Chamberlain's cut ran into this cut, and that he got off and walked up, and as he was walking west, he saw Chamberlain raise himself as he was walking up, and that he saw the nine-car draught coming down, and he called to them to stop, and the draught ran over him?

A. No, sir.
Q. What did he say to you then?

Mr. Allen: I object to the question because it — not proper rebuttal and is not proper in form.
The Court: Overruled.
Mr. Allen: Exception.

Q. What did he say as to how the accident happened?

A. He came to me that evening and we were all sitting around——

Q. (Interposing.) Just state how the accident happened, tell us what he said about how the accident happened.

A. He told all of us there that my husband was taking his cars down the track, and that the nine cars following him came down and bumped him and knocked him, that he was thrown off of the car, and when they passed over him, they noticed him.

[fol. 248] Cross-examination.

By Mr. Allen:

Q. When was this conversation?
A. At my home.
Q. When?
A. On the 7th.
Q. Did you see Mr. Jetter on the night of the 3rd?
A. No.
Q. Did he come to your house the night of the accident?
A. No, not the night of the accident.
Q. Are you sure he didn't?
A. I am sure.
Q. What?
A. I am sure.
Q. You are sure he didn't?
A. I don't recall.

Miss **Helen Cseplo**, called as a witness on behalf of the plaintiff in rebuttal, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Sansone:

Q. Miss Cseplo, where do you live?

A. 463 South Broad Street.

Q. You are a friend of Mrs. Chamberlain?

A. Yes.

Q. Do you recall ever seeing Mr. Jetter, the witness that was on the stand this morning?

A. Yes, once before.

Q. Where did you see him?

A. At my girl friend's house.

[fol. 249] Q. When you say your girl friend's home, who do you mean?

A. Mrs. Chamberlain.

Q. Do you recall when Charlie was killed?

A. Yes.

Q. When you saw Jetter, was it after Charlie was killed?

A. I didn't see him after he was killed, I saw him before.

Q. I say when Mr. Jetter came to the house, the time you say you saw him, that was after Charlie was killed?

A. Yes.

Q. Who was there when he came to the house?

A. Mrs. Chamberlain, his mother, Mr. Chamberlain, his dad, Mrs. Chamberlain, his wife, and myself.

Q. While you were there did Mr. Jetter say he had ridden some cars down to the east end, near the east end of Track 14, and that he was bringing his cars to a stop, and that the draught Mr. Chamberlain rode had run into the draught, and then he got down and walked west, and as he was walking west on Track 14, he saw Mr. Chamberlain lying there trying to raise himself, between the track, and that as he walked up he saw the nine-car draught coming down, and that he hollered to them. Did he say that?

Mr. Allen: I object to that because it is not proper rebuttal.

The Court: The same ruling, and exception allowed.

The Witness: No, he did not.

Q. What did he say?

[fol. 250] Mr. Allen: I object to that because it is not proper rebuttal.

The Court: Overruled and exception allowed.

Q. What did he say as to the accident?

A. He said when Charlie took his cars down there was nine cars in back of him that had bumped his cars and throwed him off, and the nine cars ran over him, and the last man over there, when he looked down between the cars, he saw Charlie lying in the track.

Cross-examination.

By Mr. Allen:

Q. When was this?

A. The time of the accident.

Q. When was this conversation you have told?

A. The 7th of November, on Thursday.

Q. You and Mrs. Chamberlain and Mr. Chamberlain talked about that conversation?

A. Our conversation about it, no.

Q. Didn't you talk it over yesterday?

A. No. I didn't see Mrs. Chamberlain.

Q. Did you talk it over this morning?

A. No.

Q. Not at any time?

A. No.

Q. Did anyone ask you about the conversation at any time?

A. No.

Mr. Sansone: If the Court please, the plaintiff rests.

Motion to Dismiss and for Direction of Verdict

[fol. 251] Mr. Allen: May it please the Court, the defendant renews its motion made at the close of plaintiff's case to dismiss the complaint on the ground therein stated and moves for the direction of a verdict upon the same ground, and now shows there is no negligence upon the defendant, and no facts from which an interference of negligence could be drawn and that the matter with regards negligence is purely a matter of speculation, and that a verdict should be directed for the defendant.

The Court: I will excuse the jury for a time; gentlemen, you may retire and I will send for you when I want you.

(The jury retires from the court room.)

(Discussion of the motion between the Court and counsel.)

(The jury returned to the court room.)

The Court: Gentlemen, you are instructed in this case to return a verdict in favor of the defendant.

The Clerk: Gentlemen of the jury, the Court instructs that you return a verdict in favor of the defendant, so say you all.

MOTION TO SUBMIT CASE TO JURY

Mr. Sansone: If the Court please, we note an exception to the Court's ruling and move at this time for the case to be submitted to the jury as a question of fact.

The Court: Motion denied.

Mr. Sansone: We note an exception.

[fol. 252] IN UNITED STATES DISTRICT COURT

STIPULATION AND ORDER SETTLING BILL OF EXCEPTIONS

It is hereby stipulated and agreed by and between the respective parties that the foregoing Bill of Exceptions is true and correct and contains all the evidence received upon the trial of this action or relating to the foregoing exceptions and may be settled and ordered on file.

Dated New York, February 11th, 1932.

Sansone & Gelb, Attorneys for Plaintiff-Appellant.
Burlingham, Veeder, Fearey, Clark & Hupper, Attorneys for Defendant-Appellee.

So ordered.

H. B. Anderson, United States District Judge.

[fol. 253] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS

Now comes the plaintiff, by her attorneys, Sansone & Gelb, and says, that in the record and proceedings in the above-entitled cause, there is manifest error, which occurred in the disposition of the cause in the District Court, and upon which she will rely in the prosecution of the appeal in the above-entitled cause in this, to wit:

1. That the Trial Court erred in granting defendant's motion for a direction of a verdict at the completion of the entire case, at which time the following took place:

[fol. 254] "Mr. Allen: May it please the Court, the defendant renews its motion made at the close of plaintiff's case to dismiss the complaint on the ground therein stated and moves for the direction of a verdict upon the same ground, and now shows there is no negligence upon the defendant, and no facts from which an inference of negligence could be drawn and that the matter with regards negligence is purely a matter of speculation, and that a verdict should be directed for the defendant.

"The Court: I will excuse the jury for a time; gentlemen you may retire and I will send for you when I want you.

(The jury retires from the court room.)

(Discussion of the motion between the Court and counsel.)

(The jury returned to the court room.)

"The Court: Gentlemen, you are instructed in this case to return a verdict in favor of the defendant.

"The Clerk: Gentlemen of the jury, the Court instructs that you return a verdict in favor of the defendant, so say you all.

"Mr. Sansone: If the Court please, we note an exception to the Court's ruling and move at this time for the case to be submitted to the jury as a question of fact.

"The Court: Motion denied.

[fol. 255] "Mr. Sansone: We note an exception."

Wherefore the said plaintiff prays that the judgment herein for the errors aforesaid, may be reversed and annulled, and altogether held for nothing, and that the said plaintiff may be restored to all things which she has lost by reason thereof, and that a new trial may be granted; and for such other and further relief as may be just and proper in the circumstances.

Dated N. Y., January 14th, 1932.

Sansone & Gelb, Attorneys for Plaintiff. Office & P. O. address, No. 233 Broadway, Borough of Manhattan, City of New York.

[fols. 256 & 257] Citation, in usual form, omitted in printing.

[fol. 258] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DISPENSING WITH PRINTING OF EXHIBITS

Upon reading and filing the consent annexed herewith, and upon motion of Sansone & Gelb, attorneys for the plaintiff-appellant, it is

Ordered that the reproduction of and insertion in the transcript of record in this action, of Plaintiff's Exhibits 1 and 2, and Defendant's Exhibit A, be dispensed with, and it is further

Ordered that the printing of the bond on appeal herein be dispensed with.

Dated New York City, New York, January 28th, 1932.

Manton, U. S. C. J.

[fol. 259] IN UNITED STATES DISTRICT COURT

STIPULATION AND CONSENT AS TO PRINTING OF EXHIBITS

It is hereby stipulated by and between the attorneys for the respective parties hereto, that the printing of the exhibits and bond on appeal, referred to in the foregoing order, be dispensed with, and that the said exhibits be handed up to the Court on the argument of the appeal in the Circuit Court of Appeals.

We hereby consent to the entry of the foregoing order and waive notice of settlement thereof.

Dated New York City, New York, January 28th, 1932.

Sansone & Gelb, Attorneys for Plaintiff-Appellant.
Burlingham, Veeder, Fearey, Clark & Hupper,
Attorneys for Defendant-Appellee.

[fol. 260] IN UNITED STATES DISTRICT COURT

STIPULATION FOR FILING PRINTED RECORD

It is hereby stipulated and agreed by and between the attorneys for the respective parties herein, that the foregoing printed record shall be filed for use by the Clerk in lieu of the original papers in certifying a record on appeal.

Dated February 11th, 1932.

Sansone & Gelb, Attorneys for Plaintiff-Appellant.
Burlingham, Veeder, Fearey, Clark & Hupper, Attorneys for Defendant-Appellee.

[fol. 261] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 262] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1931

No. 397

Argued April 20, 1932. Decided June 13, 1932

MARGARET V. CHAMBERLAIN, as Administratrix of the Goods, Chattels, and Credits of Charles Frederick Chamberlain, Deceased, Appellant,

v.

THE PENNSYLVANIA RAILROAD COMPANY, Appellee

Appeal from the District Court of the United States for the Southern District of New York

Before L. Hand, Swan, and Chase, Circuit Judges

Appeal by the plaintiff from a judgment of the District Court for the Southern District of New York, entered on a directed verdict, in an action under the Federal Employers' Liability Act (45 U. S. C. A. §§ 51-59) to recover for the death of the plaintiff's intestate.

Sol Gelb, of New York City, for appellant.
Morton L. Fearey, of New York City, for appellee.

OPINION

L. HAND, Circuit Judge:

The deceased was a brakeman employed in interstate commerce, at the time of his death engaged in piloting two gondola cars in the defendant's yard at Morrisville, Pennsylvania, on a misty afternoon, at five o'clock on November third. The operation was of the familiar kind; cars were being assorted by gravity upon tracks in the yard, of which there were a great many. A locomotive pushed a train up an incline, detached the desired number in a string, and let them roll down the other side of the "hump," to be switched to their destination. Each of the strings was ridden by one or more brakemen, whose duty it was to control their speed and prevent collisions. It was conceded that at some point after the deceased's cars had been shunted upon the track where *it* was to go, he fell from them and was run over by nine cars which followed his own, and which were ridden by three brakemen. He lay between the tracks, and whether his own cars had already passed over him was not clear, The question is whether he was thrown off through the negligent collision of the following nine, or whether in some unknown way he fell off. In the latter event concededly the case was not proved.

The plaintiff's only witness to the event, one Bainbridge, then employed by the road, stood close to the yardmaster's office, near the "hump." He professed to have paid little attention to what went on, but he did see the deceased riding at the rear of his cars, whose speed when they passed him he took to be about eight or ten miles. Shortly thereafter a second string passed which was shunted into another track and this was followed by the nine, which, according to the plaintiff's theory, collided with the deceased's. After the nine cars had passed at a somewhat greater speed than the deceased's, Bainbridge paid no more attention to either string for a while, but looked again when the deceased, who was still standing in his place, had passed the switch and onto the assorting track where he was bound. At that time his speed had been checked to about three miles, but the speed of the following nine cars had increased. They were just passing the switch, about four or five cars behind the deceased. Bainbridge looked away again and soon heard what he described as a "loud crash," not however an unusual event in a switching yard. Apparently this did not cause him at once to turn, but he did so [fol. 263] shortly thereafter, and saw the two strings together, still moving, and the deceased no longer in sight. Later still his attention was attracted by shouts and he went to the spot and saw him between the rails. Until he left to go to the accident, he had stood fifty feet to the north of the track where the accident happened, and about nine hundred feet from where the body was found.

The story is attacked as too uncertain to support a verdict; and it is quite true that the witness's repeated glances are a suspicious circumstance; there seems to have been no reason for his looking first when the nine cars were entering the switch, and again after a crash which did not of itself seem to him unusual. Moreover his testimony is not too clear in itself; we have stated it in its more favorable interpretation. However, all this was a matter for the jury, and assuming they thought him truthful, they might infer that a collision took place. It does not appear to us impossible, or indeed improbable, that one in his position could tell whether the two strings were together. The intervals between cars in a train are uniform; they may be detected by the straight sides. Certainly a gap of four or five car lengths, when the nine cars came to rest, would have been easily observable; and this was the story of the defendant. What Bainbridge saw, coupled with what he had heard, if uncontradicted, would be enough to support a finding that the nine cars had collided with the deceased's and thrown him off. There is no inherent impossibility in the story.

The defendant's version, backed by six or seven of its employees, was that the deceased had fallen off while clambering over his cars from the rear end. The two gondolas, with nobody in charge, made a light contact with a string still moving ahead of them, whose crew, looking backward, saw him lying on the track. The brakeman on the front of the approaching nine cars saw him between the rails, though not in time to check them until they had passed over, and clear of, him. There was however no contact between the gondolas and the nine, which, as we have just said, stopped some four or five car lengths away. Nobody professed to have seen him fall, but if the defendant's witnesses were believed, he must have done so; at least, however he got upon the track, it was not through a collision, and the defendant was not at fault. On this showing the judge thought the evidence of any collision too speculative to support a verdict and took the case from the jury. We have to decide only whether this ruling was right.

Left to ourselves with the bare record we should say that the judge's conclusion was supported by a very strong balance of probability. Not only was the testimony of Bainbridge somewhat suspicious in itself, but its contradiction was so manifold as to leave little doubt. Nevertheless, the question was really as to whom to believe, and when that is so, we do not understand that the jury may be displaced. There are of course cases where the story of one side is impossible because of the physical situation, or because it is incredible by common experience. Southern Ry. Co. v. Walters, 284 U. S. 190, 52 S. Ct. 58, 76 L. Ed. —, was such a case. Moreover, in such cases the contradicting circumstances may depend upon the testimony of other witnesses, and be conclusive only if this be assumed to be true. A court implicitly so assumes when it directs a verdict because of incredibility of the testimony, not inherent. Perhaps a direction may be proper, when the witnesses are impeached in character, or discredited upon cross-examination, if contradicted by others whose apparent veracity stands. And indeed there may even be cases where numbers alone are enough. A bench of bishops should perhaps prevail over a casual interloper, though the other side does not succeed in discrediting him. It is impossible to set any general rule, for the combinations are infinite.

The most that has been said—probably all that can be—is that there comes a point where the evidence no longer justifies any verdict but one. Pleasants v. Fant, 22 Wall. 116, 121, 22 L. Ed. 780; Delk v. St. L. & San Francisco R. R. 220 U. S. 580, 587, 31 S. Ct. 617, 55 L. Ed. 590; Slocum v. N. Y. Life Ins. Co., 228 U. S. 364, 369, 33 S. Ct. 523, 57 L. Ed. 879; Baltimore & O. R. R. Co. v. Groeger, 266 U. S. 521, 524, 45 S. Ct. 169, 69 L. Ed. 419; Gunning v. Cooley, 281 U. S. 91, 94, 50 S. Ct. 231, 74 L. Ed. 720. The jury's exclusive zone can be marked no more definitely than that in which impartial persons may differ. Gardner v. Mich. Cent. R. R., 150 U. S. 349, 360, 14 S. Ct. 140, 37 L. Ed. 1107; Richmond & Danville R. R. Co. v. Powers, 149 U. S. 43, 45, 13 S. Ct. 748, 37 L. Ed. 642; Texas & P. R. Co. v. Harvey, 228 U. S. 319, 324, 33 S. Ct. 518, 57 L. Ed. 852. It was indeed implied in Patton v. Texas & Pac. Ry. Co., 179 U. S. [fol. 264] 658, 660, 21 S. Ct. 275, 45 L. Ed. 361, that the judge's estimate of the witnesses drawn from his own observation should be weighed in the scale. Yet, if so, it seems impossible to avoid the — their credibility may be for him, which the books again and again disclaim. Indeed, unless we are to suppose ourselves in the same

result that

position as the judge when we pass upon his ruling, we must abdicate any review, except in cases where the bare print leaves no doubt. We understand that the question before us is the same as was before him; anything else makes his the final word.

To a majority of us it appears that the direction in the case at bar cannot stand without intruding upon the exclusive competence of the jury; without taking from them their power to decide who of those appearing before them are entitled to credence. No doubt if the formula is to be strictly applied that the court should intervene when reasonable men cannot differ, such cases may fall within it. If it be an exception, still it seems to us required by the traditional division of function, that the jury alone may choose between a single witness, whose story is neither inherently improbable, nor contradicted by evidence which cannot reasonably be disregarded, and a large number who contradict him, at least when they are in the defendant's employ, and in part concerned in the occurrence.

Judgment reversed.

Swan, Circuit Judge, dissents in separate opinion.

[fol. 265] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1931

No. 397

Argued April 20, 1932. Decided June 13, 1932

MARGARET V. CHAMBERLAIN, as Administratrix of the Goods, Chattels, and Credits of Charles Frederick Chamberlain, Deceased, Appellant,

v.

THE PENNSYLVANIA RAILROAD COMPANY, Appellee

Appeal from the District Court of the United States for the Southern District of New York

Before L. Hand, Swan, and Chase, Circuit Judges

DISSENTING OPINION

SWAN, Circuit Judge (dissenting):

I agree that cases are not lightly to be taken from the jury; but, if ever a directed verdict for the defendant in a negligence case is to be sustained, this, in my opinion, is such a case. Unless the nine-car cut of cars bumped into Chamberlain's two-car cut and knocked him off, there was no evidence of negligence by the defendant. Bainbridge did not testify that he saw any such collision, he inferred that it occurred because he heard a crash and because thereafter the two strings appeared to him to be moving together. But the crash might have come from elsewhere in the busy yard, and he was in no position to see whether the two strings of cars were actually together. He repeatedly said he was paying no particular attention, and his position was such, being 900 feet from the place where Chamberlain's body was found and less than 50 feet from the side of the track in question, that he necessarily saw the strings of cars at an acute angle when they appeared to be moving together. At such an angle it would be physically impossible even for an attentive observer to tell whether the forward end of the nine-car cut was actually in contact with the rear end of the two-car cut. All the witnesses who were in a position to see testified that the nine-car cut never did hit Chamberlain's. Plaintiff's evidence was wholly circumstantial, and the inferences which might otherwise have been drawn from it were shown to be utterly erroneous, unless all the defendant's witnesses were willful perjurers. This is not a case where direct testimony to an essential fact is contradicted by direct testimony of other witnesses, though even there it is conceded a directed verdict might be proper in some circumstances. Here, when all the testimony was in, the circumstantial evidence in support of negligence was thought by the trial judge to be so insubstantial and insufficient that it did not justify submission to the jury. Cf. Southern Ry. Co. v. Walters, 284 U. S. 190, 194, 52 S. Ct. 58, 76 L. Ed. —. His opinion is entitled to "large respect" by an appellate court "when in his deliberate opinion there is no excuse for a verdict save in favor of one party, and he so rules by instructions to that effect." Patton v. Texas & Pac. Ry. Co., 179 U. S. 658, 660, 21 S. Ct. 275, 276, 45 L. Ed. 361. I think the judgment should be affirmed.

[fol. 266] IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

MARGARET V. CHAMBERLAIN, as Admnx., etc., Plaintiff-Appellant,

vs.

PENNSYLVANIA RAILROAD COMPANY, Defendant-Appellee

JUDGMENT—Filed June 20, 1932

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be, and it hereby is, reversed, with costs. Further ordered that execution be issued for the collection of said costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 267] [File endorsement omitted.]

[fol. 268] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 269] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 17, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 37,076. U. S. Circuit Court of Appeals, Second Circuit. Term No. 379. The Pennsylvania Railroad Company, petitioner, vs. Margaret V. Chamberlain, as administratrix of the goods, chattels, and credits of Charles Frederick Chamberlain, deceased. Petition for a writ of certiorari and exhibit thereto. Filed September 19, 1932. File No. 37,076.